DOCUMENT RESUME

ED 339 637 SO 021 439

TITLE	Justice. Law in a Free Society Series. Level VI. Teacher's Guide. Second Edition.
INSTITUTION	Center for Civic Education, Calabasas, CA.
SPONS AGENCY	Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice), Washington, D.C.
REPORT NO	ISBN-0-89818-140-2
PUB DATE	90
NOTE	97p.; For corresponding Student Text, see SO 021 438. For other items in series, see SO 021 436-441.
AVAILABLE FROM	Center for Civic Education, 5146 Douglas Fir Road, Calabasas, CA 91302 ($12.00).
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Citizen Participation; *Citizenship Education; Citizenship Responsibility; High Schools; *Justice; *Law Related Education; *Problem Solving; Skill Development; Social Problems; Social Values; Student Educational Objectives; Teaching Methods; Values Education

ABSTRACT

This teacher's curriculum guide is designed to help high school teachers guide students to develop a better understanding of difficult issues raised by questions of justice. It is hoped that the ideas, observations, questions, and procedures students learn in the curriculum will help them to make informed decisions about how to promote justice and combat injustice in their own lives and the world around them. For each of the 15 lessons, the guide provides an overview, objectives, materials needed, and teaching procedures. An introduction discusses the rationale for the Law in a Free Society Program, the organization of the Justice Curriculum, the use of intellectual tools in analyzing issues of justice, program components, and helpful hints for conducting class discussions. The 15 lessons are organized into four units. Unit 1, What is Justice, includes (1) Why divide issues of justice into three categories? and (2) How do our nation's founding documents promote justice? Unit 2, What is Distributive Justice?, contains (3) How can intellectual tools be used to analyze issues of distributive justice? (4) A problem of distributive justice: who should get the airline pass? and (5) What other values and interests should be considered when dealing with issues of distributive justice? Unit 3, What is Corrective Justice?, features (6) What is the first intellectual tool useful in making decisions about issues of corrective justice? (7) What other intellectual tools are useful in making decisions about corrective justice? (8) What responses can we make to wrongs and injuries? (9) How would you solve these problems of corrective justice? and (10) What response would you recommend in this case about ethics in government? Unit 4, What is procedural justice?, presents (11) What intellectual tools can help you evaluate issues of procedural justice? (12) What other values and interests should be considered in determining whether procedures are fair? (13) Is procedural justice always important? and (14) How do you balance the goals of procedural justice with other interests of our society? The 15th lesson is a program review, Are there situations which raise issues in all three categories of justice? (DB)

ED339637

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- ☐ Minor changes have been made to improve reproduction quality.
- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
THERESA RICHARD
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO 021 439

Level VI

Center for Civic Education

BEST COPY AVAILABLE

JUSTICE

Law in a Free Society Series

Level VI

TEACHER'S GUIDE

Center for Civic Education ■ 5146 Douglas Fir Road ■ Calabasas, CA 91302 ■ 818-340-9320

Cover: 1970.43 *Parson Weems' Fable*, Grant Wood,
oil on canvas, 1939
Amon Carter Museum, Fort Worth

© Center for Civic Education 1979, 1990
Second Edition

All rights reserved. Except for use in a review, reproduction or transmittal of this work in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, and use of this work in any form in any information storage and retrieval system is forbidden without prior written permission of the publisher.

The first edition of this text was developed with the support of a grant from the National Endowment for the Humanities.

This second edition has been prepared under Grant #85-JS-CX-0009 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

ISBN 0-89818-140-2

EXECUTIVE DIRECTOR
Charles N. Quigley

CURRICULUM DEVELOPERS
Mara Braverman
Marshall Croddy
Charles N. Quigley
Jerold Rosen

PRINCIPAL WRITER
Lorenca Rosal

EDITOR
Jane Sure

ART DIRECTOR AND ILLUSTRATOR
Richard Stein

PRODUCTION DIRECTOR
Evelyn C. Davis

PRODUCTION ASSOCIATE
Theresa Richard

PRODUCTION ASSISTANT
Lise Borja

TYPESETTERS
Roslyn Danberg
Jan Ruyle

CONSULTANTS

William Landau
Associate Professor
of English
Los Angeles Pierce College

Herbert Morris
Dean of Humanities
University of California,
Los Angeles

Duane E. Smith
Associate Professor
of Political Science
University of California,
Los Angeles

BOARD OF DIRECTORS

Read Ambler
Margaret Branson
R. Freeman Butts
Donald L. Clark
John F. Cooke
Jane A. Couch
Thomas A. Craven
Robin Paige Donoghue
H. David Fish
C. Hugh Friedman
Ruth M. Gadebusch
Susan Hone
Richard Ibanez
William Johnston
Napoleon Jones, Jr.
James L. Keane
William L. Lucas
Stephen P. McCall
Joseph P. McElligott
A. Ronald Oakes
Leland R. Selna, Jr.
Robert B. Taylor
Benjamin Travis
Francis Villemain
Pearl West
frank d. winston

Contents

Introduction		7
Unit 1	**What Is Justice?**	18
Lesson 1	Why Divide Issues of Justice Into Three Categories?	19
Lesson 2	How Do Our Nation's Founding Documents Promote Justice?	22
Unit 2	**What Is Distributive Justice?**	24
Lesson 3	How Can Intellectual Tools Be Used to Analyze Issues of Distributive Justice?	25
Lesson 4	A Problem of Distributive Justice: Who Should Get the Airline Pass?	27
Lesson 5	What Other Values and Interests Should Be Considered When Dealing With Issues of Distributive Justice?	31
	Concluding Activity	36
Unit 3	**What Is Corrective Justice?**	38
Lesson 6	What Is the First Intellectual Tool Useful in Making Decisions About Issues of Corrective Justice?	39
Lesson 7	What Other Intellectual Tools Are Useful in Making Decisions About Corrective Justice?	43
Lesson 8	What Responses Can We Make to Wrongs and Injuries?	47
Lesson 9	How Would You Solve These Problems of Corrective Justice?	51
Lesson 10	What Response Would You Recommend in This Case About Ethics in Government?	60
	Concluding Activity	64
Unit 4	**What Is Procedural Justice?**	68
Lesson 11	What Intellectual Tools Can Help You Evaluate Issues of Procedural Justice?	69
Lesson 12	What Other Values and Interests Should Be Considered in Determining Whether Procedures Are Fair?	72
Lesson 13	Is Procedural Justice Always Important?	77
Lesson 14	How Do You Balance the Goals of Procedural Justice With Other Interests of Our Society?	82
	Concluding Activity	87
Program Review		
Lesson 15	Are There Situations Which Raise Issues in All Three Categories of Justice?	89

"Liberty without learning is always in peril and learning without liberty is always in vain."

John Fitzgerald Kennedy
March 18, 1963

A constitutional democracy, more than any other type of government, depends upon an informed and responsible citizenry. While James Madison and Alexander Hamilton hoped that creating the right institutions would solve the problems of self-government, thinkers like Thomas Jefferson, John Adams, and Mercy Otis Warren recognized that these institutions require the support of an enlightened people.

The experience of the past two hundred years confirms their beliefs. The operation of even the most carefully designed political institutions is ultimately dependent upon the character of its citizens. As Montesquieu argued, if tyranny rests on fear, a free government must rest on civic virtue.

From the inception of the public school system in America, educational institutions have played a major role in preparing young people for citizenship. Schools today, as in the infancy of our republic, must serve to nurture and sustain civic competence, civic responsibility, and a reasoned commitment to our most fundamental principles and values.

To assist schools in fulfilling this critical role, the Center for Civic Education has developed the Law in a Free Society curriculum.

Charles N. Quigley
Executive Director
Center for Civic Education

Introduction

Rationale for the Law in a Free Society Program

A fundamental hypothesis of the Law in a Free Society program is that education can increase a person's capacity and inclination to act knowledgeably, effectively, and responsibly. It follows that the role of educational institutions must be to help students increase their capacity to make intelligent choices for themselves—to learn **how** to think, rather than **what** to think. The alternative, indoctrination, is an improper role for educational institutions to play in a free society, and one which has had, in general, the opposite effect of that which its proponents have predicted.

The Center for Civic Education was founded upon the belief that the learning experiences provided by a curriculum based on this philosophy result in significant progress towards students' development of a rational and profound commitment to those principles, processes, and values that are essential to the preservation and improvement of our free society.

The Law in a Free Society (LFS) curriculum is designed to

- promote an increased understanding among students of the institutions of our constitutional democracy and the fundamental principles and values upon which they were founded
- develop the skills young people need to help them become effective and responsible citizens
- increase the understanding and willingness of students to use democratic processes when making decisions and managing conflict, both in public and private life

The curriculum is based on four concepts fundamental to understanding our constitutional democracy: justice, authority, privacy, and responsibility. Each of these concepts is developed sequentially in scope and complexity, from Level I (grades K-1) to Level VI (grades 10-12). The curriculum is designed to be integrated into social studies and general humanities courses.

While conceptual in nature, the LFS program is based on the day-to-day experiences of students. The uniqueness of the curriculum is that it helps students see the relationship of their experiences to the larger arena of social and political life.

The LFS curriculum provides analytic frameworks, or sets of "intellectual tools," that help students think critically and develop reasoned and responsible positions on important issues. The intellectual tools are reinforced through the use of active learning strategies, by which students develop the personal and group interaction skills required for successful social and political participation in a democracy.

In studying the LFS materials, students develop an ability to identify issues that require social action. They are encouraged, not through indoctrination but through informed inquiry, to make a personal commitment to accept the responsibilities associated with the rights we enjoy as citizens—responsibilities essential to the continued existence of a society based on the ideals of justice, equality, freedom, and human rights.

Overall Conceptual Framework of the Justice Component of the Law in a Free Society Program

It is almost impossible to read a newspaper or watch a television program without encountering an instance of claimed injustice or unfairness—in the treatment of a particular individual or group; in the way certain goods, resources, or burdens are distributed; or in the trial of an alleged lawbreaker.

Why is this so? One explanation is the historical commitment of our society to the pursuit of justice, which is manifested quite clearly in the fundamental documents of our political and legal systems, the Declaration of Independence and the Constitution.

However, the recognition of the commitment is only the beginning of the difficult problem of determining the just position or action in any given situation. This LFS curriculum on justice is designed to help students understand and apply the basic principles and considerations that are useful in examining issues of justice, so they can determine for themselves what would be just in a particular situation.

From such learning activities, students should gain an increased awareness of the importance of justice in their own lives, and its place in contemporary society. Most importantly, it is hoped that this knowledge will encourage young people to become actively involved in seeing that the principles and goals of justice become a reality for all people.

Organization of the *Justice* Curriculum

In order to deal with the broad range of issues of justice, this component of the LFS curriculum has been organized according to a common classification scheme which breaks down issues of justice into three categories—distributive, corrective, and procedural.

Unit One introduces the concept of justice and the three categories. **Unit Two** focuses on issues of distributive justice and offers intellectual tools helpful in analyzing these issues. **Unit Three** and **Unit Four** deal with corrective and procedural justice respectively, with appropriate intellectual tools introduced in each unit. The program concludes with an activity which raises issues involving all three categories of justice.

The Use of Intellectual Tools in Analyzing Issues of Justice

"Justice," as the term is used in this program, means roughly the same thing as "fairness." Students are not asked to answer the question "What is justice?" by developing an abstract, philosophical definition of the subject. Instead, they are asked to examine and make decisions about justice in specific situations by learning to apply sets of intellectual tools.

The term "intellectual tools" is used to refer to a wide variety of ideas and sets of questions useful in examining and making decisions about problems of justice in society. These "tools of the mind," like any good tool, can be useful in a number of ways. The programs of the Center for Civic Education are unique in the training they give students in the use of intellectual tools.

The need for and usefulness of various intellectual tools in analyzing issues of justice may be made more clear by first looking at how intellectual tools are used in other areas of study. Imagine archaeologists walking across a hillside looking for signs of an ancient Native American village. In their minds they carry a body of knowledge and skills, including facts, ideas, hypotheses, and questions which enable them to notice and understand things that an untrained person might not see or understand.

While a layperson might walk right over the remains of a site where Native Americans had once lived, the archaeologists, armed with their special knowledge, immediately recognize the telltale signs of human habitation. They then use their intellectual tools to systematically gather and process information in order to gain a better understanding of the past.

It is the same with persons trained in the use of the intellectual tools of other disciplines. In each, the trained person has an advantage over the untrained person in understanding certain things, accomplishing certain objectives, or in reaching informed decisions and determining subsequent action. This is true whether one is talking about a master carpenter, a television producer, a political scientist, a judge, or an astronaut.

As in other areas of study, the subject of justice requires the use of a specialized set of intellectual tools. Some of these "tools of the mind" will be introduced in the *Justice* curriculum.

Program Components

As in the other components of the Law in a Free Society curriculum, *Justice VI* is composed of a nonconsumable student book and a teacher's guide.

Each student lesson includes text for reading and discussion, problem-solving activities, and a section to help students use the concepts and skills presented in the lesson. The narrative for each lesson is divided into small segments to make it more manageable and accessible for students.

Skill-building activities are presented directly within the student text. These activities are designed to facilitate the ability to

- work effectively in an individual, small group, and entire class setting
- participate actively in making individual and group decisions
- express personal convictions and recognize and respect the views of others
- set goals and plan and take appropriate actions to achieve them
- serve in a leadership role and be willing to follow the leadership of others
- develop reasoned solutions to controversial issues
- persuade, debate, and negotiate in order to respond to and resolve conflict

Various graphs, worksheets, charts, and forms relevant to lesson content are provided in the student book. Each lesson also includes colorful illustrations designed to complement textual material and enhance comprehension.

Aside from the student book itself, the only other materials needed to complete the LFS program are those found in an ordinary classroom, such as a chalkboard, poster paper, notebook or writing tablets, and pens or pencils.

Please note that students will be asked to keep notes, develop outlines, and record their ideas and opinions, as well as write essays, poems, editorials, and stories throughout the course of the program. To develop communication skills, you may wish to have each student keep a special notebook or journal.

The teacher's guide for each unit is designed to complement and extend the student text. Its purpose is to serve as a resource for educators, not to limit their own creativity.

Following this introduction, the teacher's guide is divided into sections which parallel each lesson of the student text. Each section begins with an overview of the lesson, lesson objectives, and a list of needed materials.

Strategies for presenting and discussing each lesson are provided under the heading "Teaching Procedures." Suggestions are offered to help plan lesson sessions, facilitate discussion, complete activities, and augment and enrich each lesson.

Special "Planning Ahead" sections are provided to assist in classroom management. These include suggestions for incorporating visits from outside professionals during the program.

Finally, the teacher's guide includes two unique features. The first is a letter which can be duplicated and sent home to parents and guardians to inform them about the curriculum and to encourage them to reinforce at home the lessons being taught in the classroom.

The second is a special certificate of achievement to be presented to each student upon completion of the *Justice* curriculum. The certificate is an excellent way to reinforce the student's sense of accomplishment and self-worth. It serves as a symbol of academic achievement, and of the student's commitment to become an active, responsible citizen of a free society.

Helpful Hints for Conducting Class Discussions

Civic education often entails presenting and discussing controversial subject matter. The discussion of controversial issues not only excites students, but also teaches decision-making skills, citizenship participation, and conflict management.

Despite these educational rewards, however, teachers are often reluctant to introduce some controversial subjects in the classroom, fearing that students will be unable to rationally discuss emotionally-charged subjects or ambiguous issues.

Nevertheless, reasoned debate and controversy are the lifeblood of a democratic society. As educators, we would be doing our students and our nation a disservice if we shy away from such issues in our schools. In fact, successful and constructive classroom discussion of controversial topics and contemporary issues can lead to exciting, stimulating, and rewarding moments both for you and your students.

You can help make these discussions successful by following a few basic teaching tips:

- When addressing controversial issues, encourage your students to examine and present conflicting views. Be sure to allow ample time to explore all sides of an issue.
- Emphasize the legitimacy of various viewpoints and stress historical antecedents and contemporary parallels. By doing so, students can see how conflicts have been managed or mismanaged in the past.
- Try to present the central issues of the controversy in a tangible form. Make allusions to the problems and dilemmas your students face in their own lives. Help them to identify specific points of agreement and disagreement, places where compromise might be possible, and places where it is unlikely to occur.
- Discuss ideas or positions, rather than individuals, associated with a controversy. Conflicting attitudes should be presented in an unbiased manner.

- Emphasize that, in most cases, it is not the outcome or the decision which your students reach that is important, but that they are able to reach a reasoned decision and express it in a civil manner. Stress that on many controversial topics, reasonable people might very well differ. By having students explain the positions of others and justify their own opinions, they will learn to respect and understand varying opinions and have a better appreciation of the diverse and pluralistic nature of our society.
- Always remember to conclude or debrief an activity or discussion by summarizing the arguments and exploring the likely consequences of the various alternatives your students have suggested.
- Finally, be sure to emphasize that by learning how to discuss, manage, and evaluate controversial issues, your students will develop a better understanding of the importance of controversy, compromise, and consensus in a free society.

Encouraging Cooperative Learning

The activities presented in the student text and in the teacher's guide are designed to promote both individual and cooperative learning.

At times students work independently, setting their own goals and working to achieve them. However, even when a project or assignment is done independently, students are encouraged to actively share their work and receive feedback from their peers and their teacher. In adversarial learning models, such as an appellate court simulation, students work together during the debriefing activity and have the opportunity to reinforce and critically appraise each other's efforts.

The majority of activities presented in the LFS program are designed to promote active cooperative learning. The teacher monitors students as they engage in prolonged and intense interaction with each other. Students work with study partners or in small groups, sharing materials and ideas. All individuals in the group are asked to participate in some way and are held accountable. They are expected not only to contribute academically, but to develop and use interpersonal skills that will be of benefit to them throughout their lives.

One way to help students learn to work cooperatively is to distribute a self-evaluation check list to be completed by each student after each class activity. The list that follows has been adapted from the check list developed by D.W. Johnson and R.T. Johnson of the Cooperative Learning Center at the University of Minnesota. (Note that not all ten items on the list will be relevant in every activity.)

Self-Evaluation Check List

- ☐ 1. I contributed my ideas and information.
- ☐ 2. I asked others for their ideas and information.
- ☐ 3. I summarized the ideas and information of other group members.
- ☐ 4. I shared my materials.
- ☐ 5. I asked for help when I needed it.
- ☐ 6. I helped the other members of my group.
- ☐ 7. I made sure everyone in my group understood how to do the activity we were completing.
- ☐ 8. I helped keep the group working on task.
- ☐ 9. I included everyone in our group.
- ☐ 10. I respected the opinions of each individual in our group.

Planning Ahead

VISITING PROFESSIONALS: Before beginning the program, you may wish to make arrangements for your class to visit a courthouse, house of correction, city council meeting, trial, or other place or event involving the dispensing of justice, the correcting of injustice, or the gathering and processing of information upon which decisions of justice will be based.

You can also bring the outside world into your classroom by inviting professionals involved with issues of justice to participate in one of the program activities. Special classroom visitors provide a change of pace for you and your students. They can share concrete knowledge and personal experiences to enliven the concepts presented in the lessons. In addition, they serve as role models of possible career opportunities for your students.

During the course of this program, you may wish to invite an attorney, judge, legislator, probation officer, law enforcement officer, private investigator, clerk of court, or a representative from an agency, organization, or citizen group which monitors public policy concerning issues of justice.

Because of busy schedules, it is advisable to extend these invitations as soon as possible. Once you have pre-arranged a visit, a committee of students should be selected to write formal invitations and serve as escorts for your guests on the day of their visit.

Remember that outside professionals are usually not trained educators, and may be uncomfortable about serving in this role. For a successful visit, you will want to send your guest a copy of the lesson to preview. Follow up with a meeting or phone call. Reassure your visitor that you will direct the class and describe exactly what is expected of him or her. Be sure also to remind the classroom guest to speak simply and avoid jargon as much as possible. Following these simple guidelines will help assure that the visit is a success for everyone involved.

LEARNING CENTERS: Prior to beginning the *Justice VI* curriculum, you may wish to speak to your school librarian about establishing a special reading or learning center in your classroom or school library. In the course of this program, your students will read adaptations from literature in which issues of justice are raised, such as *Crime and Punishment* and *The Count of Monte Cristo*.

In addition to including the unabridged copies of these novels in the learning center, you and your librarian may wish to include other stories, plays, and novels which raise justice issues—such as *The Merchant of Venice, The Crucible, The Trial, 1984, The Ox Bow Incident, The Scarlet Letter, Darkness at Noon,* and *Bleak House*—as well as non-fictional accounts of the Sacco and Vanzetti trial, and biographies of heroes and heroines in the fight for justice—Tecumseh, Harriet Tubman, Susan B. Anthony, Martin Luther King, Jr., Caesar Chavez, etc.

Learning centers are an excellent way to extend learning, to review and reinforce concepts taught in the classroom, and to integrate the teaching of social studies and language arts. In addition, outside reading combined with the strong writing component of the LFS program will help students develop their communication skills.

PARENT OR GUARDIAN LETTER: Before beginning the program or at the first open house, you may wish to duplicate the letter on the following page to inform parents and guardians about the program. Such a letter improves school-home relations and helps reinforce the concepts and skills taught in the classroom.

Dear Parent or Guardian,

It is my pleasure to announce that your child will be studying the concept of **Justice** this school semester, as part of the *Law in a Free Society* curriculum developed by the Center for Civic Education.

Our constitutional democracy depends upon an enlightened and responsible citizenry. The learning experiences in this program are designed to give students the skills they need to be responsible citizens and to encourage their reasoned commitment to our most fundamental principles and values.

In this program, students will learn about justice in terms of the benefits and burdens distributed in our society; how to identify fair ways to correct injustice; and how to ensure that the procedures we use are fair for everyone.

You can help reinforce what your child is learning in the classroom by asking about the program and by discussing current events and situations in your personal lives that raise issues of justice.

Most importantly, please include your child, as much as possible, in the citizenship activities with which you yourself may be involved. Take your child to a meeting of your local service organization, citizen league, or school board. Ask your child to accompany you when you go to vote. Together write a "Letter to the Editor" of your local newspaper about an issue in which you are both interested. Volunteer to work as a team on a community project, such as a voter registration drive or a petition campaign.

Through activities such as these, you can actively take part, not only in your child's education in school, but in underscoring the importance of knowledgeable citizen participation to ensure that our society will always remain free.

If you have any questions about the program or would like to volunteer to participate as a school aid or classroom visitor, please contact me at _____. I look forward to hearing from you.

Yours sincerely,

Introducing the Program

Before beginning this program in which class discussion and sharing of opinions are critical components, it is suggested that you lay down some ground rules. For example:

- When expressing an opinion, always be prepared to justify it.
- Politely and respectfully listen to the opinions of others.
- In the interest of personal privacy, do not use actual names when sharing personal knowledge of examples of justice or injustice.

Then, after distributing the student books, give your class a brief description of the LFS program if they are unfamiliar with this curriculum.

UNIT 1
What Is Justice?

To introduce this program on Justice, ask students to look at the cover of their books. In what way does the painting *Parson Weem's Fable* by Grant Wood (1939) raise the idea of justice or fairness? You may wish to ask questions such as the following:

- What wrongful act does the picture illustrate? What do you think would be a fair way to respond to this act? Does it matter that the boy admitted chopping down the cherry tree?
- Why might Parson Weems have told this morality fable to school children in the early days of the Republic? Does the story say anything about how Americans traditionally view the importance of justice?
- Is there anything else in the picture that relates to justice or injustice? Did the fact that slavery existed well into the 19th century contradict the American idea of justice?

You may wish to return to a discussion of the cover after introducing the three categories of justice. The artist Grant Wood (1892-1942) was born to a poor Quaker farm family in Iowa. His work both captured rural America and raised questions about the contradictions in our society. One of his most famous works is *American Gothic* (1930).

Next, have students take a moment to look over the table of contents. Then have them turn to the introduction to Unit 1. Ask a student to read the introductory quotation aloud and then paraphrase it. Note the question posed in the photo caption.

After students have read the introductory page, you may wish to assign each student a study partner and designate small groups to work together on various program activities. This would also be a good time to tell students about the learning center and explain that they will be keeping a program journal. Their first entry might be a list or sketch of images they associate with the concept "justice."

Lesson 1

Why Divide Issues of Justice Into Three Categories?

Lesson Overview

In this lesson, students will begin to explore the broad concept of justice and to give their opinions about incidents that are just or unjust. They will also be introduced to the three categories of justice which will be studied in this program—**distributive, corrective,** and **procedural**—and have an opportunity to identify examples which fall into each category.

Lesson Objectives

At the conclusion of this lesson students should be able to

1. explain the terms **distributive, corrective,** and **procedural** justice
2. identify examples of all three categories of justice
3. work in small groups to make decisions about what is just or unjust in given situations
4. communicate and justify their opinions about what is fair or unfair in situations illustrating different issues of justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Identifying individual opinions about justice

Introduce the lesson by having students read the introductory text and answer the three "What do you think?" questions that follow. Most students will identify each situation as an example of some form of injustice. They will no doubt vary, however, in their opinions about how to correct each injustice. The discussion will give you the opportunity to assess your class's prior thinking about the topic.

B. Reading and Discussion: Categorizing issues of justice into three types

Write the following three terms on the chalkboard or on poster paper: **distributive justice, corrective justice, procedural justice.** Have students read the next section which defines and gives examples of each category. Use the questions in the illustration captions to facilitate discussion and concretize the abstract definitions. Then ask students to categorize the three examples of injustice that introduce the lesson.

Use these initial discussions, also, to underscore that reasonable people may differ about how society should respond to specific situations involving issues of justice. Emphasize the importance of reaching informed opinions and respecting the views of others.

C. Problem Solving: Identifying examples of the three categories of justice

Use this problem-solving activity to introduce your class to the small-group learning approach if they are unfamiliar with it. Note that in most small-group activities suggested in this program, the class eventually reconvenes as a whole to share their opinions and conclusions.

Each group should consider all twelve examples and classify them into the three categories of justice. The twelve examples can be classified as follows: **distributive** 1,2,5,12; **corrective** 3,4,6,7; **procedural** 8,9,10,11.

"What do you think?" questions follow to help you debrief the activity.

D. Concluding Activity

Complete the lesson by referring students back to their initial conceptualizations of the word "justice" as possible illustrations for the cover. Did the pictures they first suggested illustrate all three categories of justice? What, if any, new illustrations would they add?

Finally, draw your students' attention to the "Using the Lesson" segment in their books. Underscore the importance of keeping a program journal and then make the initial assignment, as described in the first activity. The second activity can be a creative writing assignment which could be completed in the journal, or an oral assignment.

If your students are unfamiliar with doing a clipping project, explain that they should collect magazine and newspaper articles, ads, photos, headlines, cartoons, editorials, etc. Afterward, they can organize, categorize, and edit the collection and use it as the basis for bulletin board displays, oral presentations, essay resources, etc. Then make individual assignments, as described in the third activity.

E. Planning Ahead

In the next lesson, students will be using a worksheet to help them identify issues of justice raised in the Declaration of Independence and the Constitution. You may wish to duplicate the worksheet at this point to distribute in the next class session.

Lesson 2

How Do Our Nation's Founding Documents Promote Justice?

Lesson Overview

In this lesson, students will examine excerpts from the Declaration of Independence and the Constitution from the viewpoint of justice.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify parts of the Declaration of Independence and Constitution that illustrate distributive, corrective, and procedural justice
2. analyze additional historical examples of distributive, corrective, and procedural justice
3. take and justify positions on issues of distributive, corrective, and procedural justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: A look at the Preamble

Begin the lesson by having a student read the Preamble to the Constitution aloud, as you write the key words on the chalkboard or on poster paper: **union, justice, tranquility, defense, general welfare,** and **liberty.**

Explain to the students that they will have a chance to look at selections from our founding documents from the point of view of the three categories of justice introduced in the previous lesson.

B. Problem Solving:
Examples of the categories of justice in our founding documents

Have students work in four groups to complete this activity. Each group should be assigned one of the excerpt sheets and identify which quotations deal with distributive, corrective, and/or procedural justice. Each group should also answer the question posed in the illustration caption on the excerpt sheet.

A cumulative worksheet of possible answers appears below. Note that excerpts may fall in more than one category.

GROUP	Distributive	Corrective	Procedural
A	1,2	2,3	2,3,4
B	1	1,2	3,4
C	1,4	3	2,3
D	2,3,4	2	1

C. Sharing and Discussing:
Debriefing the activity

Have spokespersons from each group explain how they classified the excerpts and why. Discuss any suggestions for classifying them differently. What generalizations can your students make about the goals of the Framers in terms of issues of justice and other fundamental principles and values?

D. Concluding Activity

The first of the reinforcement activities described in "Using the Lesson" allows students to further explore the Declaration of Independence to find examples of claimed denial of justice. Students can complete this exercise and the editorial assigned in activity 3 in their program journals.

Students may wish to work in partnership to create the advertisements and picket signs described in activities 2 and 4. The posters might be displayed in the school library or hallway. Perhaps a local radio station would be interested in running the thirty-second spot as a PSA (public service announcement). A small group of students might be selected to judge prospective entries and to contact the radio station about possible air time.

UNIT 2
What Is Distributive Justice?

Introduce the second unit by explaining that students will now have the opportunity to take a closer look at each of the categories of issues of justice and learn methods to help them analyze and resolve issues in each category.

Begin the unit on distributive justice by discussing the example from the Tlingit Northwest Coast Native American culture. Note that different cultures often view issues of justice in different ways. The American experience is unique because of our cultural diversity. Examples of this diversity will be threaded throughout the *Justice* program.

Lesson 3

How Can Intellectual Tools Be Used to Analyze Issues of Distributive Justice?

Lesson Overview

In this lesson, students will be introduced to the term **intellectual tools**. They will learn the first tool, the **principle of similarity**, and the considerations of need, capacity, and desert, and then have the opportunity to apply these in solving three short problems of distributive justice.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain what an intellectual tool is
2. define and apply the principle of similarity, using the concepts of **need, capacity,** and **desert** in particular situations

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reviewing the concept of distributive justice

Begin the lesson by reviewing the concept of distributive justice, using the examples given in the introductory text of this lesson. Discuss your students' answers to the "What do you think?" questions. Notice that the second set of examples is much more complex. Explain that to assist in analyzing such complex issues, they will learn a set of procedures and concepts known as **intellectual tools.**

B. Reading and Discussing: Introducing the concept of intellectual tools

To introduce the idea of intellectual tools, write a list such as the following on the chalkboard or on poster paper. Ask students to match the correct tool with the task to be accomplished.

TOOL	TASK
egg beater	car repairing
wrench	library cataloguing
card files	cooking

Note that it is easier to do a job properly if one uses the correct tools, as the cartoon illustrates.

Then read "Tools of the Trade" and "The Principle of Similarity." Ask students to offer concrete examples of the application of the principle of similarity, using the considerations of need, capacity, and desert.

Do not become concerned if your students have difficulty with these abstract ideas at this point. Throughout the program they will have repeated practice using these intellectual tools. Mastery is not the goal at this time.

C. Problem Solving: Weighing the alternatives in issues of distributive justice

Use the three examples to help students identify situations which raise questions of **need, capacity,** and **desert.** Afterward, use the "What do you think?" questions to facilitate discussion of each example.

D. Concluding Activity

You may wish to use the first and third activities from "Using the Lesson" to conclude the lesson session. The second and fourth activities will require some outside research.

E. Planning Ahead

In the next lesson, students will be completing a chart to help them analyze a problem of distributive justice. At this time. you may wish to duplicate one chart for each small group, as well as a few extras, should any students disagree with their group's decision on the issues raised in the problem.

Lesson 4

A Problem of Distributive Justice: Who Should Get the Airline Pass?

Lesson Overview

Having been introduced to the concept of intellectual tools and having had some initial practice in applying the principle of similarity, students will now consider **need, capacity,** and **desert** in terms of a problem posed in a satire of the film "Casablanca."

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. apply the principle of similarity in a fictional case which raises issues of distributive justice
2. complete a study chart based on the principle of similarity and the considerations of need, capacity, and desert
3. discuss and justify their analysis and opinions in a case of distributive justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reiterating the principle of similarity

Begin class by asking your students to sit in small groups. Explain that today they will have the opportunity to try their hand at making an important decision concerning distributive justice.

Review the principle of similarity by having students brainstorm examples of each of the three considerations of need, capacity, and desert. To do so, write these three terms on the chalkboard or poster paper and give each group exactly one minute to come up with as many examples in each category as possible. You can even use a stop watch and announce, "On your mark, get set, go!"

A group secretary should jot down the examples. (Note that you may wish to have students take turns serving in this capacity and as group spokesperson as they work throughout the program.)

After you call "Time!", have the secretaries read the ideas and write down the examples on the board under the appropriate headings, once the class has come to a consensus as to whether each example is valid.

B. Reading and Discussing: Taking an initial look at the problem

Have each group of students read the comic book treatment of "Crashablanca." Afterward, have students volunteer their initial opinions about which three individuals should be awarded the pass and why.

C. Problem Solving: Applying the principle of similarity

Distribute the study charts to each small group secretary. Have students look at the problem-solving chart. Students should work cooperatively to discuss and reach a consensus about how the chart should be completed.

Once a consensus has been reached, the secretary should record the answers on the group chart. (You may wish to have a few extra charts available should individuals not agree with their group. Consensus is a goal but not a requirement as long as individuals can justify their dissenting opinions.)

A sample of a condensed, completed chart follows:

CRASHABLANCA CHART			
Character	**Need**	**Capacity**	**Desert**
Clyde	needs to expand his cookie business	ability to run a business; can expand business for personal and social gain	can pay for the pass—deserves a chance to do good (clinic) for community
Elsie and Lazlo	Laslo needs to get out so he can continue work to save planet	Lazlo is able to win journalism awards and raise public awareness	Elsie deserves a favor from Nick based on prior friendship
Maurice	needs to save his sanity	unclear if he has the ability to use the opportunity to do good or if he is too unstable	deserves a chance because of his status as a human being, as a high-ranking official, and Nick's best customer
Mr. and Mrs. Bumcheck	need to save daughter	have the will, desire, and ability to care for daughter	deserve a chance to save daughter
Ms. Bumcheck	needs to save her life	ability to get better and live a happy, full life if she gets proper medical attention	deserves pass because of her status as a human being to preserve her life and pursue her happiness
Nick	needs to escape creditors	probably will get into same mess on the outside	possession is 9/10s of the law; deserves to use pass he possesses

D. Concluding Activity

Reconvene the class to debrief the problem. Use the "What do you think?" questions to guide discussion. Does your class come to a consensus?

Note that some students may decide to separate the Bumchecks, giving the daughter one pass because she has the greatest need, giving one of her parents the second pass to accompany and care for her, but deciding to award the third pass to one of the other characters. A similar argument might apply to giving Lazlo a pass and leaving Elsie behind.

It is important to emphasize that there is no "right" answer to the problem posed in "Crashablanca." All that is required of students for the successful completion of this activity is that they actively apply the intellectual tools to which they have been introduced, and that they communicate a reasoned explanation for their decisions, based on the principle of similarity and the considerations of need, capacity, and desert.

After the final discussion, you may wish to assign additional activities from "Using the Lesson." Should a small group of students wish to work on the third activity, be sure to arrange a time for them to share their masterpiece with the rest of the class or perhaps at a school assembly.

E. Planning Ahead

In the next lesson, students will be completing a study chart to assist them in analyzing a court case which raises issues of distributive justice. Please duplicate at least three copies of the chart found on page 43 of the student book (one for each of the groups into which your students will be divided). Note that you may wish to duplicate additional copies for students to complete independently or to have available for those who wish to offer a dissenting opinion.

You also may want to have additional information about the court cases presented in the lesson available in the learning center. They are found in the teaching guide section for Lesson 5.

Lesson 5

What Other Values and Interests Should Be Considered When Dealing With Issues of Distributive Justice?

Lesson Overview

In this lesson, students will begin to explore other interests and values which might be taken into account when making decisions about issues of distributive justice.The first problem studied will be a light-hearted situation concerning a school awards ceremony. The second will be an actual court case involving racial discrimination.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify values and interests other than justice that might be taken into account when making a decision in a case of distributive justice
2. apply intellectual tools helpful in studying issues of distributive justice to a fictitious situation
3. apply intellectual tools to an account of a legal case to identify and decide an issue of distributive justice
4. complete a distributive justice study chart
5. discuss and justify their views on issues of distributive justice and other values and interests which might underlie their positions.

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Sharing individual opinions

Begin by asking students to read the text found on the first page of the lesson. Then discuss their answers to the "What do you think?" questions that follow. You may wish to make a list of the interests and values they consider important on the chalkboard or on poster paper for reference at a later point in the lesson.

B. Problem Solving: Analyzing a hypothetical situation

Have students sit with study partners to read the text and answer the "What do you think?" questions that follow the news story. Afterward, reconvene the class and have students share their answers, ideas, and opinions.

As students share suggestions of interests and values to consider, compare them to the chalkboard list you compiled earlier. Make a note of any new interests and values considered under the heading "Problem #2."

C. Problem Solving: Analyzing an actual court case

Have students work with study partners to read the case and complete the accompanying chart.

The purpose is to give the students the opportunity to analyze the case with the tools introduced in this unit. Then have the class reconvene and share and discuss their answers. A completed sample chart follows:

DISTRIBUTIVE JUSTICE CHART	
Question	**Answer**
1. What benefit or burden is being distributed?	1. Employment as a pilot for Continental Airlines
2. What persons are being considered as recipients?	2. One African American pilot and five Caucasian pilots. Seventeen additional Caucasian pilots became recipients over next two months.
3. In applying the principle of similarity, ask these questions: a. Need: To what degree are the persons similar or different in terms of their need for what is being distributed?	3. a. Not enough information to determine need
b. Capacity: To what degree are the persons similar or different in terms of their capacity to deal with what is being distributed?	b. All applicants are similar in that they all passed the employment test and have had flight experience. They are different in that Green had more flight experience than five of the others.
c. Desert: (1) To what degree do the persons being considered deserve a particular benefit?	c.(1) Might be argued that as a former member of the Armed Forces who served his country, Green deserved special consideration. Also, because he was a member of a group (African Americans) which has long been discriminated against, he deserved special consideration.
(2) To what degree do the persons being considered deserve a particular burden?	(2) Not given enough information to determine.
4. What other values or interests should be considered in order to reach a decision?	4. Perhaps safety, convenience, possible labor problems

D. Concluding Activity: Reinforcing the lesson

Have students share and discuss their views, using the "What do you think?" questions as a guideline. At this time, you also may wish to share the final court decision in the Green case.

Summary of decision in *The Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.*, 372 U.S. 714 (1963)

The Colorado Anti-Discrimination Commission found that the only reason that Marlon Green was not selected for the training school was because of his race. The Commission ordered Continental to cease and desist from such discriminatory practices and to give Green the first opportunity to enroll in its training school in its next course. The Supreme Court, in a unanimous opinion, upheld the right of the Commission to issue this order. (The Court held that the Colorado statute as applied in this case to prevent racial discrimination in hiring did not impose a constitutionally prohibited burden upon interstate commerce and was not superseded by any federal acts.)

You may wish to invite an employee of local government or industry responsible for implementation of equal opportunities in employment to visit the class. Ask the person to explain present policy and its relation to local, state, or federal laws.

Your class may find it interesting to know that in many of the landmark cases in our nation's history, the United States Supreme Court has issued five-to-four decisions. There have even been cases in which the judges have issued nine separate opinions! Also, there have been important instances, for example, in the *Brown* v. *Board of Education* school desegregation case, where the Supreme Court has reversed its previous opinions (see *Plessy* v. *Ferguson*). Again, what is to be stressed is the decision-making process, not necessarily the decision itself.

Next, note the other interests and values your students found in this case. How do they compare with the previous lists recorded on the chalkboard? Are there any generalizations which can be made about the types of other interests and values your class believes are important to consider when dealing with an issue of distributive justice?

Finally, you may wish to assign one of the reinforcing activities found in "Using the Lesson."

In the first activity, among the specific considerations that might be taken into account are racial and ethnic diversity and balance, geographic diversity, financial need and deservingness, academic potential as well as achievement, athletic ability, etc.

At this writing, the Elks incident (the second activity) has not been completely resolved.

Unit 2
Concluding Activity

At the end of this and the following two units of the student book, you will find a concluding activity which you may wish to conduct as a whole class activity or assign to a group of motivated students as an extra-curricular project.

The Unit Two activity focuses on a constitutional amendment suggested by some participants at the 1987 Philadelphia celebration of the bicentennial of the drafting of the Constitution. During this activity, students should consider themselves delegates to a second constitutional convention. They will consider the proposal to constitutionally guarantee a job in order to secure a minimum standard of living.

Students should work individually or with a study partner to apply the intellectual tools they have learned in this lesson to analyze the problem. Then they should make a list of the arguments for and against the proposal.

You also may wish to conduct a class discussion on the proposal or hold a debate, as instructed in the student text. Regardless of which technique you follow, be sure to have your delegates vote yay or nay on the amendment, which to pass, must be adopted by a two-thirds vote.

To complete work on this unit, have those students who have been working on a clipping thesis about distributive justice, and any others engaged in special projects in this unit, make presentations to the class.

Planning Ahead

In the first lesson of the next unit (Lesson 6), students will be analyzing a series of short problems concerning corrective justice by applying the first of a set of five new intellectual tools.

To assist them in this exercise, you may wish to duplicate three copies of the following form for each student.

WRONG INJURY BOTH

1. **Extent:** _____

2. **Duration:** _____

3. **Impact:** _____

4. **Offensiveness:** _____

UNIT 3
What Is Corrective Justice?

Introduce the unit by discussing the quotation from the Code of Hammurabi. Does it remind your students of any similar beliefs about how crimes should be punished? Some may mention the saying paraphrased from the Old Testament, "An eye for an eye and a tooth for a tooth." ("Eye for eye, tooth for tooth, hand for hand, foot for foot," Exod. 21:24.) Are students aware of any forms of corrective justice today which might reflect this philosophy? Some might mention capital punishment as an example.

Lead the discussion toward the points made in the text in order to introduce your students to some of the ideas and considerations which they will be exploring in the days ahead.

End this introductory discussion by having your class consider the question raised in the caption on page 49.

Lesson 6

What Is the First Intellectual Tool Useful in Making Decisions About Issues of Corrective Justice?

Lesson Overview

In this lesson, students will be introduced to five intellectual tools that are useful in analyzing issues of corrective justice. They will then consider in more detail the first of these intellectual tools, i.e., how to identify a wrong or injury and the seriousness of its consequences. They will have the opportunity to practice using this tool in two short exercises.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. name five intellectual tools helpful in analyzing issues of corrective justice
2. identify certain wrongs or injuries, and judge the seriousness of their consequences by considering four questions
3. evaluate environmental problems using the first intellectual tool for corrective justice, and make appropriate recommendations based on that analysis

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Presenting five new intellectual tools

Begin the lesson by asking a student to define "intellectual tool" and then to explain the humor in the cartoon. How would your students explain pictorially what an intellectual tool is or how one is used? Have them take a few minutes to sketch and share a cartoon or illustration of their own.

Introduce briefly the five new tools first presented in this lesson. Then look in greater detail at the first of these new tools. Ask students to read the definitions of a wrong and an injury and volunteer examples of each. Can they also think of a situation which causes both a wrong and an injury?

B. Problem Solving: Learning to identify wrongs, injuries and the seriousness of their consequences

Have students work in study pairs to complete the "Quick Quiz," identifying the **extent, duration, impact,** and **offensiveness** of each wrong and injury. Students can write their responses on a separate sheet of paper or on forms which you distribute. Samples of the completed forms appear below. Afterward, have students share and discuss their answers.

A.	WRONG	INJURY	BOTH
1. Extent:	nobody affected except lawbreaker		
2. Duration:	seconds		
3. Impact:	none		
4. Offensiveness:	highly objectionable; lives at risk.		

B.	WRONG	INJURY	BOTH
1. Extent:	one person affected		
2. Duration:	length of healing time		
3. Impact:	very serious; the injury could have had permanent side effects, could have caused loss of income, etc.		
4. Offensiveness:	highly objectionable behavior; the injury could have been prevented		

C.	WRONG	INJURY	BOTH
1. Extent:	one car damaged		
2. Duration:	could be permanent		
3. Impact:	not enough information given; could be a scratch or demolishment		
4. Offensiveness:	not offensive; no one at fault		

C. Problem Solving: Analyzing problems of environmental justice

Work with students to complete this exercise orally.

You may wish to note, as these examples indicate, that not all issues of corrective justice are raised in "cops and robbers" situations. Increasingly, environmental law is raising many issues of both distributive and corrective justice. You might wish to invite an environmental lawyer to class or a representative of the EPA or an active citizen environmental group to discuss corrective justice from their perspective. Students might be interested in knowing that environmental law was ranked as one of the top ten growing fields in a 1989 career survey.

D. Concluding Activity

The first of the "Using the Lesson" activities is a writing exercise to be completed in the students' program notebooks. You may wish to use the second activity, however, to conclude the lesson and to further explore the issues raised in the last problem-solving activity.

Your students might enjoy holding a short mock hearing on what ought to be done about the Corpse Corporation. To do so, assign students various roles to play, as indicated. You may wish to group those persons likely to have a common point of view on the problem and allow them a few minutes to develop arguments in favor of their position. The government officials should draw up a list of three to five questions they wish to ask at the hearing. Individuals who wish to testify should write their names, occupations, and a brief description of their stance on the issue on 3x5 cards.

Collect the cards and convene the hearing as its chair. Call on various individuals to testify. Have the government officials ask the prepared questions and additional questions to clarify testimony.

Afterward, government officials should meet and then issue their recommendations. Members of the "press," of course, should cover the event, interview those who testify immediately after the hearing, and again after the official decision is announced. Some reporters should then write news articles about the event and others scripts for a two-minute nightly TV news story.

E. Planning Ahead

In the next lesson, small groups of students will work together to analyze a problem of corrective justice. A chart is provided in the student text to assist them. You may wish to duplicate one copy of the chart for each small group of six students. Additional copies can be on hand for dissenters from the majority opinion.

Lesson 7

What Other Intellectual Tools Are Useful in Making Decisions About Corrective Justice?

Lesson Overview

In this lesson, students will be introduced to two more intellectual tools helpful in analyzing issues of corrective justice, i.e., identifying relevant characteristics of the person or persons causing the wrong or injury, and those of the person or persons wronged or injured. They then will apply the three tools they have learned in Unit Three to an archaeological adventure.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify the relevant characteristics of a person causing a wrong or injury by asking key questions
2. identify the relevant characteristics of a person wronged or injured
3. analyze a fictional problem of corrective justice using the intellectual tools introduced in the unit
4. complete a corrective justice study chart
5. express and justify their opinions in a case of corrective justice
6. consider what additional information might be helpful in analyzing and making determinations in cases of corrective justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Identifying relevant characteristics

Explain to your class that before they begin to examine another situation which raises questions of corrective justice, they will be introduced to two more intellectual tools.

Have students take turns reading the text aloud about each of the intellectual tools and the important questions which must be asked when applying these tools. After each question is read aloud, you or a student should paraphrase it or give an example of an incident in which such a question might be relevant, such as the following:

7. **Other Considerations:** Would you punish a person who stole a loaf of bread to feed a starving child in the same manner as a wealthy individual who shoplifted an expensive jar of wrinkle cream to add to her cosmetic collection? Why or why not? Suppose it was shown later that the wealthy shoplifter had a medical condition which resulted in her not being able to control her stealing (kleptomania). Would this additional fact, which raises an issue of **control**, change your initial viewpoint?

B. Problem Solving: Digging into a problem of corrective justice

Your students should enjoy this archaeological adventure which raises questions of corrective justice. To begin, divide students into groups of six and assign parts, as described in the student text.

Have students read the play aloud and then discuss it, applying the three intellectual tools introduced so far in this unit. To assist them, distribute and have them complete the study charts. Afterwards the class should reconvene to discuss their responses to the problem.

A sample of a completed chart for the intellectual tools introduced in this lesson appears below:

1. **State of mind:**

   a. **intent:** Shard intended to take the treasures by force to protect them, to further scientific knowledge, and to gain fame and prestige in his field.

b. **recklessness:** Shard perhaps was reckless in hurrying the pack animals across a ravine and not crating the treasures properly.

c. **carelessness:** Shard was at least careless in not paying attention to risks that were foreseeable.

d. **knowledge of probable consequences:** Shard should have been able to predict the consequences of his actions, but he was blinded by his monomaniacal desire to protect the treasures, hatred of his competitor, and desire to gain fame for himself.

e. **control:** One could argue that Shard was so obsessed that at some point he lost his self-control.

f. **duty:** One could argue that Shard, as a professional and scholar, did have a duty to protect the treasure, but also had an obligation not to harm another person, even if he did not respect her.

g. **other considerations:** In large part, Shard was interested in furthering knowledge and protecting ancient treasures; however, he was also motivated by personal pride and a desire for recognition and fame.

2. **Past history:** Shard had not caused similar harm in the past. If, however, he had previously used force against others, that would be a significant point to consider. In that event, one might suggest a harsher response to deter or prevent him from repeating his actions in the future.

3. **Character and personality:** Because of his past dedication, one might argue for leniency for Shard, ascribing his behavior in this case to over-zealousness, emotional stress, and exhaustion.

4. **Reactions:** Once Shard "came to his senses" in the desert, Shard realized he had acted incorrectly, both in threatening Barnone and in stealing the treasure. He waited for the patrol to catch up and later expressed regret.

5. **Role:** Shard acted with others, but as their superior who gave the orders. Instead of urging Shard to do wrong, his associate tried to persuade him against taking his actions.

Notes on Pandora Barnone

1. **Contribution to the wrong or injury:** One might argue that Barnone's desire for fame and personal financial gain contributed to causing Shard to want to prevent her, at all costs, from gaining the treasure. Arguments could be made that Barnone acted in self-defense by rushing Shard (the best defense is a good offense), or that she was contributing by precipitating personal violence.

2. **Ability to recover:** Barnone was not eradicably harmed, although the treasure was. The inability to recover lost property would be one argument for a stiffer response to Shard's actions.

C. Concluding Activity

Debrief the activity by using the "What do you think?" questions to guide a class discussion. You then may wish to assign the first activity listed in the "Using the Lesson" section as a written review of the problem. The second activity offers a longer term project based on the Shard case, to be completed by a small group of students.

The third activity focuses on a contemporary look at scientific ethics in terms of museum acquisitions of artifacts and other archaeological finds. You may wish to post the guidelines developed by students and perhaps invite a scientist, archaeologist, museum representative, or a member of a Native American rights organization to class to further discuss the topic.

Lesson 8

What Responses Can We Make to Wrongs and Injuries?

Lesson Overview

In this lesson, students will learn a fourth and fifth intellectual tool that will help them analyze issues of corrective justice. They will learn to identify common responses to wrongs and injuries in our society. They will also begin to consider related interests and values which might play a part in determining how to respond to a problem of corrective justice.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify common responses to wrongs and injuries and their purposes
2. recognize situations designed to illustrate these responses
3. explain the relevance of related values and interests when arriving at an opinion in a case of corrective justice
4. make generalizations about how our society should respond to wrongdoings and injuries based upon commonly held principles and values

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Considering many options

To begin this lesson in which students will consider possible responses and related interests and values which should be taken into account before responding to a case of corrective justice, pose a school-based situation for your class to explore.

For example, ask your students to imagine that they serve on a school disciplinary board designed to hear cases involving infractions of school rules and to recommend appropriate responses. In the case before them, two students have been caught smoking in the lavatory. One student is a freshman who has never been in trouble in school before. The second is a junior who has been caught smoking on two previous occasions. The first time, she was warned not to smoke in the lavatory again. The second time, she was told that she could no longer participate in school extra-curricular activities. What response would your students recommend in each case and why?

In discussing this hypothetical case and the responses your students suggest, focus discussion primarily on what special interests and values your class feels are important to consider. Expand discussion to consider possible guidelines for explaining to someone unfamiliar with the values of our society why leniency might be recommended in one case, but not in another—why one person might be pardoned and another punished.

Can your students suggest any general guidelines or list of values and interests—such as safety, security, costs, practicality, human dignity—which should be considered when exploring possible responses in cases of corrective justice? Make a note of their suggestions on the chalkboard or on poster paper for future reference.

Afterward, have students read the introductory text of the lesson.

B. Problem Solving: Identifying common responses to wrongs and injuries and their purposes

In the next segment of the lesson, students are introduced to a fourth intellectual tool and then presented with a problem in which they will match various situations to responses they illustrate.

Read the text with your class, asking students to offer examples of each type of response. Then have each student take a few minutes to match the injuries and wrongs to the responses. (Note that there may be more than one response illustrated by each example.) Afterward, have students compare and discuss their answers to the "Match Game." Possible answers are: (1) d,g (2) a,g (3) e (4) d,f (5) d (6) c,d,g (7) b

C. Reading and Discussion: Identifying related values and interests to be considered when responding to a wrong or injury

Have students read the description of the fifth intellectual tool useful in analyzing issues of corrective justice. Afterward, divide the class into small groups to analyze the mock headlines and news summaries.

Then use the "What do you think?" questions to guide a class discussion. Keep a chalkboard or poster paper list of the guidelines your students suggest for responding to issues of corrective justice.

D. Concluding Activity

Conclude the lesson by taking a second look at the opening text concerning the sometimes competing goals delineated in the Preamble of the Constitution, as well as the list of generalizations of values and interests made in the opening activity. Can any correlations be made between the initial list of values and interests and the list of generalizations concerning appropriate responses to issues of corrective justice that were recorded in the previous exercise? Do the general responses suggested by students promote the values and interests they had initially identified? Do they wish to revise either list as a result of the comparison?

To reinforce the concepts discussed in this lesson, you may wish to make assignments from "Using the Lesson." The first activity is a partnership role play in which students work together to devise proper responses to issues of corrective justice. The second is an individual analysis of the bills of rights of the state and federal constitutions, in terms of rights related to corrective justice.

The third exercise requires analyzing a case involving religious freedom as a justification for breaking a law. The fourth is a small-group activity in which students analyze youth crime statistics and create a storyboard for a filmstrip, video, or TV documentary to highlight issues of corrective justice which have an impact on youth. The storyboard can include sketches and a story synopsis or outline of specific points to be raised in the presentation.

E. Planning Ahead

In the next lesson, students will be working in small groups to analyze problems of corrective justice. A chart is provided to assist them. You may wish to duplicate a chart for each group at this time, and have additional charts available as needed.

You also may wish to invite to class a member of a consumer rights organization, a representative from the Better Business Bureau, a lawyer from the attorney general's office or bar association, or the consumer reporter from your local newspaper or television station to discuss the consumer fraud case, which follows the completion of Lesson 9.

Lesson 9

How Would You Solve These Problems of Corrective Justice?

Lesson Overview

In this lesson, students will use the five intellectual tools that have been presented in this unit to analyze two problems, one from classic literature, *Crime and Punishment*, and the second a look at a contemporary issue of corrective justice focused on consumer fraud.

Lesson Objectives

At the conclusion of the lesson, students should be able to

1. use the five intellectual tools introduced in this unit to analyze two cases of corrective justice
2. complete corrective justice study charts
3. share, discuss, and justify their opinions about the two cases

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reviewing the five intellectual tools introduced in this unit

Explain to your class that they will be working in small groups to analyze two different cases involving issues of corrective justice. To do so, they will apply the intellectual tools introduced in this unit.

Begin by reading the chart provided in this lesson, as a way to review the five intellectual tools. Then divide the class into small groups and assign each group one of the problems presented in this lesson. A recorder for each group

should complete the chart as applied to the problem assigned. You may wish to travel among the groups to assist in discussion and to answer pertinent questions. After completing the chart, each group should select a spokesperson.

B. Problem Solving: Analyzing issues of corrective justice in Dostoyevsky's *Crime and Punishment*

Dostoyevsky's novel provides an in-depth portrait of a criminal and his crime. The adaptation has been simplified for the purposes of this program. You may wish to share with your class that it has been argued that Raskolnikov was not only demoralized by physical deprivations, but that he also was schizophrenic. One of the characters in the novel, Porfiry, a detective with a keen interest in rehabilitation, in fact urged Raskolnikov to plead temporary insanity and throw himself on the mercy of the court.

At the end of the novel, the protagonist is convicted and sentenced to eight years hard labor in Siberia. However, through coming to terms with his own guilt, Raskolnikov leaves for prison already on the road to rehabilitation. A literary critic has written:

> *...in his [Raskolnikov's] loss of illusions, of peace of mind, and of the wealth he sought, he learns through suffering. Important changes result from acceptance of his inward punishment. His humanitarian instincts are brought out; his deep love of family and friends is revealed, and his belief that life must be lived is renewed....*
>
> *Masterpieces of World Literature*
> Frank N. Magill, Ed., 1989

You may wish to share that the author himself was imprisoned and exiled for nine years for alleged political crimes against the czar. As a result, Dostoyevsky came to believe that legal punishment was not a deterrent to crime. He emphasized that punishment was important, however, in order to bring about spiritual absolution and regeneration. How do your students' views of punishment compare to the author's?

A sample of a completed chart follows. Note that the purpose of this exercise is to provide your students with practice using the intellectual tools they have learned in this unit. It is understood that their analysis will be based on the brief adaptation of the novel and evaluated according to basic American notions of justice.

1. **Identify the Wrong or Injury**

   a. **What was the wrong or injury?** Aliona Ivanovna and her stepsister Lizaveta were murdered.

   b. **How serious was the wrong or injury?**

      1) **extent:** Two people were murdered. Others were affected by the crime.

      2) **duration:** The initial crime took a matter of minutes, but its effect (death) is permanent.

      3) **impact:** The impact was very serious—two people died.

      4) **offensiveness:** It was very offensive to ideas of the sanctity of life.

2. **Identify the Relevant Characteristics of the Person or Persons Causing the Wrong or Injury**

   a. **State of Mind**

      1) **intent:** Ivanovna was killed intentionally and with premeditation. Lizaveta was killed intentionally but out of panic.

      2) **recklessness:** Not applicable—the murders were intentional.

      3) **carelessness:** Also not applicable for the same reason.

      4) **knowledge of probable consequences:** Also not applicable—Roskolnikov planned to kill Ivanovna, and deliberately killed Lizaveta.

      5) **control:** As the story is told here, Roskolnikov did have control over his actions. It might be argued that he was mentally ill.

      6) **duty or obligation:** Roskolnikov had a moral and legal duty to respect human life.

      7) **other considerations:** Roskolnikov believed that Ivanovna did not deserve to live. He thought he was acting to benefit his family and society, but does this excuse his actions?

   b. **Past History:** The poverty of Roskolnikov's family, and his mental and physical ill-health may have impaired his thinking. There is no record of past wrongdoing.

c. **Character and Personality:** Roskolnikov's initial pity for Lizaveta and his indignation about Ivanovna's actions indicate some sense of social justice. He appeared to be mentally obsessed.

d. **Reactions:** Roskolnikov became obsessed with his own guilt and eventually confessed.

e. **Role:** Roskolnikov committed the crimes by himself.

3. **Identify the Relevant Characteristics of the Person or Persons Wronged or Injured**

a. **Contribution:** It could be argued that Ivanova's wealth gained at the expense of students, and her cruel treatment of Lizaveta, led to Roskolnikov's hatred of her and to his subsequent actions. Lizaveta did not contribute to the wrong.

b. **Ability to Recover:** Neither victim can recover.

4. **Consider Common Responses to Wrongs or Injuries**

a. **Inform:** To just inform is not enough. Roskolnikov already understands.

b. **Overlook or Ignore:** This is not a possible response in this case.

c. **Forgive or Pardon:** An argument for leniency—but not complete pardon—might be made given his mental and physical health at the time of the crime, and his subsequent remorse and confession.

d. **Punish:** Certainly the author would say he should be punished severely. (Students might debate incarceration in prison, in a mental institution, capital punishment, etc., in addition to banishment and forced labor, the punishment Raskolnikov receives in the novel.)

e. **Restore:** The victims' lives cannot be restored.

f. **Compensate:** The individuals killed cannot be compensated, but perhaps society can be through some sort of service. (In the novel, Roskolnikov works in a prison camp for eight years.) Ivanovna's family may wish to seek compensation for loss of future income from the victim.

g. **Treat or Educate:** Roskolnikoff perhaps should receive medical treatment for his personality disorder. (The author would suggest religious counselling.)

5. **Consider Related Values and Interests**

   a. **Correction:** There is no way to correct the harm done. Punishing Raskolnikoff might satisfy the desire for corrective justice.

   b. **Deterrence and/or Prevention:** Many argue that severe punishment, including execution, serves as a deterrent to others, although the evidence for this is inconclusive. It might prevent Raskolnikoff from repeating his actions.

   c. **Distributive Justice:** The principle of similarity should be considered. A wide range of responses in murder cases is possible. Premeditation, mental illness less than insanity, provocation, may be taken into account. Premeditation is usually treated more severely. If Raskolnikoff's mental condition could be considered criminal insanity, he could be confined in a mental institution rather than a prison.

   d. **Human Dignity:** The affront to human dignity the murders represent deserves punishment, but respect for human dignity may lead some to avoid the death penalty in any situation.

   e. **Preservation of Human Life:** Removing Raskolnikov from society will protect others in society from murder by him. Life imprisonment as opposed to execution will save his life. Rehabilitation so that he is no longer a threat to society may be a possibility.

   f. **Efficient Use of Resources:** Almost all alternatives are expensive, including incarcerating Raskolnikoff for life, imprisoning him in a mental institution, going through the procedures involved in testing the fairness of applying the death penalty, or providing professional help in his rehabilitation.

   g. **Freedom:** an argument could be made that imprisoning Raskolnikov protects the freedom of the rest of society. It can also be argued that restoring Raskolnikov's mental health so that he does no harm to others in the future preserves his freedom.

h. **Proportionality:** Only a serious penalty would seem to be appropriate in this case, which involved taking the lives of two people.

i. **Revenge or Retribution:** Some might demand death as a way for society to "get even." Others might suggest a lesser sentence to satisfy society's desire for retribution.

C. Problem Solving: Analyzing issues of corrective justice in a consumer fraud case

A sample of a completed chart for the consumer fraud case follows. If you have planned to invite community guests to discuss the case with your class, students should prepare a list of questions to ask the panel of guests about this and related cases. For example, what laws exist to prevent the type of fraud which occurred in the "Big Beef" case? What procedures are in place to help consumers monitor business and hold it accountable? What role should local, state, and federal governments play in consumer protection?

1. **Identify the Wrong or Injury**

   a. **Wrong:** The meat company made misleading promises about the cost and quality of meat and availability of service, and overcharged for the freezer.

      Injury: Consumers suffered financial losses, stains on their credit records, and mental stress.

   b. **Seriousness of the Wrong or Injury**

      extent: The story does not specify, but probably many people were affected.

      duration: Some wrongs, such as poor meat and high cost, were immediate and lasted as long as the family kept the freezer.

      impact: The costs and losses were financially severe for low-income families.

      offensiveness: The business practices of the company were repugnant. The misrepresentations took advantage of a non-English-speaking, low-income group, as well as consumers in general.

2. **Identify the Relevant Characteristics of the Person or Persons Causing the Wrong or Injury**

   a. **State of Mind**

      intent: The meat company intended to mislead customers in order to make money.

      recklessness: Not applicable; the wrong was intentional.

      carelessness: Not applicable; the wrong was intentional.

      knowledge of probable consequences: The meat company must have known what would happen to customers needing service. The company knew the customers received inferior meat at a higher price.

      control: The company had control of its actions—in fact, carefully arranged the plan to accomplish the wrong.

      duty or obligation: The company has a moral and probably legal obligation to engage in fair business practices. It has a duty to fully inform customers, especially non-English speakers, about the contract.

      other considerations: There are no other considerations evident—the profit motive was the primary consideration.

   b. **Past History:** The company's past history is not known.

   c. **Character and Personality:** The actions of the company's owner and salespersons indicate unscrupulous character.

   d. **Reactions:** The company made itself unavailable and then sold contracts to the finance company. It acted with complete lack of contrition.

   e. **Role:** The company perpetrated the entire scam.

3. **Identify the Relevant Characteristics of the Person or Persons Wronged or Injured**

   a. **Contribution:** It can be argued that the customers allowed themselves to be deceived. They could have checked out what they were paying for more carefully or found someone to help them.

b. **Ability to Recover:** The customers may be able to recover damages suffered because of the company's fraudulent behavior, and be compensated for duress.

4. **Consider Common Responses to Wrongs or Injuries**

   a. **Inform:** Simply informing would not be severe enough to prevent similar behavior in the future or to warn others not to attempt similar shady business deals.

   b. **Overlook or Ignore:** Overlooking or ignoring this behavior might encourage similar behavior in the future.

   c. **Forgive or Pardon:** There is no reason to forgive or pardon.

   d. **Punish:** It may be best to punish the responsible officials of the meat company with a fine at least, and perhaps jail terms. The company might be required to perform a service for the community, such as build a park, provide free meat to welfare agencies, or fund literacy classes.

   e. **Restore:** The company should be forced to repay monies taken from customers and clear any damaged credit ratings.

   f. **Compensate:** In addition, the customers might be entitled to punitive damages for "pain and suffering."

   g. **Treat or Educate:** It might be possible to "reform" the responsible officials by educating them about the plight of the poor to create sympathy for them.

5. **Consider Related Values and Interests**

   a. **Correction:** Forcing repayment by the company would at least partially provide correct justice.

   b. **Deterrence and/or Prevention:** Severe penalties would probably prevent company officials from repeating their behavior, and, with publicity, deter others from similar behavior.

   c. **Distributive Justice:** These wrongdoers should be treated the way wrongdoers guilty of similar fraudulent behavior have been treated unless there are relevant differences.

d. **Human Dignity:** The dignity of the customers would be preserved and enhanced by penalties to the company.

e. **Preservation of Human Life:** This is not an issue here.

f. **Efficient Use of Resources:** All options except to ignore or pardon would cost about the same. Imprisonment would add to the cost.

g. **Freedom:** Company officials would have their freedom restrained if given jail sentences.

h. **Proportionality:** The responses suggested above would be reasonable in relation to the wrong committed.

i. **Revenge or Retribution:** Retribution would be satisfied by jail sentences or heavy fines.

D. Concluding Activity

After spokespersons have reviewed each group's completed charts with the entire class, use the "What do you think?" questions to debrief the two problems. How do the values and interests considered when solving the problems posed in Lesson 8, compare with those considered in this lesson? Are there any new guidelines for solving problems of corrective justice that your students wish to suggest?

To reinforce the concepts presented in the lesson, you may wish to assign some of the "Using the Lesson" activities. Each of the three activities is an individual creative writing exercise. In the first, students write an editorial; in the second, television news copy; and in the third, a film review. You may wish to have samples of each kind of writing available for your students to review prior to drafting their pieces. You may also wish to have students do these activities in partnership, reading, criticizing, and editing each other's works before the final manuscript stage.

Afterward, display the works on a bulletin board or place them in a looseleaf binder for other students to read.

E. Planning Ahead

Lesson 10 focuses on a mock government ethics hearing. You may wish to have clippings about current government ethics investigations on hand to enhance discussion. You may also wish to duplicate the chart in this lesson for use by study partners or individuals.

Lesson 10

What Response Would You Recommend in This Case About Ethics in Government?

Lesson Overview

The last lesson in the unit presents a role-play activity in which students explore a question of government ethics in terms of corrective justice.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. apply to a government ethics case the five intellectual tools helpful in analyzing issues of corrective justice
2. role-play a government hearing on an ethics scandal
3. explain the positions of certain characters based on their history, actions, and testimony
4. explain and justify their opinions in the case

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Sharing and exploring attitudes

Write the term "government ethics" on the chalkboard or on poster paper. Ask students if they are familiar with any government scandals, contemporary or historical (Watergate, Tea Pot Dome, etc.). If you have clippings of government ethics cases, you may wish to share them at this time.

After a general discussion, ask your class to suggest the type of responses they think appropriate in these cases. Should a federal government official involved in a scandal such as Watergate, for example, be given the same type of sentence as a bank employee who embezzled funds, or a teenager who burglarized a drug store? Should those in government be held to a higher standard of accountability than citizens not in public office, or to the same standard?

B. Problem Solving: Exploring government ethics from the viewpoint of corrective justice

The problem is divided into two parts. In the first section, students work in partnership to read the mock newspaper article and the witness statements about a government scandal and analyze them by completing the corrective justice chart found on pages 84-87 of the student book (Lesson 9).

In the second part of the problem, students will role-play a government hearing on the ethics scandal. You may wish to assign the parts students will play at the outset of the lesson. These include:

Mayor Bob N. Weave
City Counsellor Gerry Mander
Contractor Tommy Rot
Building Code Officer Robin Banks
Fire Officer Smokie Waters
City Clerk Conn Puter
District Attorney Marshall Law
Bay City Chronical reporter Penny Dreadful
Mayoral press secretary Spin Kontrol
Heidi Indignant from Keep Your Eye on the Rascals citizen group
Additional Task Force members
Assorted members of the press, concerned citizens, and attorneys

Students should begin by working in pairs to read the article and witness statements and complete the chart for each witness.

To prepare for the role play, meet with individual students or groups of students to give additional instructions. You may wish to have students write character descriptions of the parts they will play, and perhaps sample statements they will make during the hearing.

Task Force members should design questions to ask those who testify. The press should be prepared with questions of their own to ask key players after the hearing. Those who will most likely be interviewed, such as the mayor, his press secretary, the D.A., etc., should be prepared to take a position on the scandal and be ready to suggest ways to avoid such a scandal in the future.

Note that the role play can be as simple or as complicated as you wish. You may want to confine it to a simulation of the Task Force meeting, followed by interviews and then a class discussion of the problem.

Or you may wish to give room for more creative work. For example, Heidi Indignant and her citizen group might make signs and picket the proceedings. A group of TV reporters armed with a videocam could record the session and interviews afterwards, then edit the tape and prepare a three-minute newscast on the story. Other members of the press could write news articles and editorials on the scandal. A "Meet the Press" session could be staged, including, of course, Penny Dreadful who broke the story, as well as the mayor and his political rival, Gerri Mander.

Regardless of the approach, students should be encouraged to design their questions and answers to highlight issues of corrective justice.

C. Concluding Activity

Hold a class discussion to debrief the activity, using the completed study charts and the "What do you think?" questions as a guide. Also refer back to the initial discussion concerning government accountability and whether or not those in public office should be held to a higher standard of behavior than those who are not. If the answer is "yes," were the responses designed by your students to deal with the problem consistent with this point of view? What general recommendations can they make concerning corrective justice as a result of studying the issues raised in this lesson?

Afterward, you may wish to assign some reinforcement exercises from the "Using the Lesson" section. The first two activities are designed for individual work, but could easily be adapted for use by study partners or a small group. In the third activity, students conduct a school survey, the results of which can be shared in your school or local newspaper.

In a similar poll conducted by the Gallup Corporation for *Newsweek, Inc.*, in 1989, the results were:

Do you support the following punishments for casual users?

	SUPPORT	OPPOSE
Suspend driver's license for one to three years	77%	22%
Seize cars used to buy or carry drugs	82%	15%
Inform employers	68%	28%
Publish name in newspaper	62%	36%
Require community service	87%	11%
Environmental work camps or boot camps	71%	26%
Fines up to $10,000	67%	28%
A period of house arrest	68%	27%
At least some jail time	74%	22%

To raise more money for the fight against illegal drugs how do you feel about the following measures?

Increase federal taxes on liquor and cigarettes	73%	26%
Add a 1 percent surtax to personal income taxes	34%	63%
Add a 1 percent surtax to corporate income taxes	65%	31%

For this *Newsweek* Poll, The Gallup Organization interviewed a national sample of 609 adults by telephone Sept. 7-8. The margin of error is plus or minus 4 percentage points. Some "Don't know" and other answers omitted. The *Newsweek* Poll © 1989 by *Newsweek, Inc.*

From *Newsweek*, September 18, 1989, copyright 1989 by *Newsweek, Inc.* All rights reserved. Reprinted by permission.

Unit 3
Concluding Activity

One of the key debates in our society concerning corrective justice focuses on the death penalty. You may wish to conclude work in this unit by staging a class debate on this issue. As suggested in the student book, you may wish to focus the debate on a particular aspect of the question, such as the death penalty for drug trafficking.

For example, in 1988, Congress debated and subsequently passed a new drug law under which the death penalty is to apply to murders committed at the scene of a crime by drug "kingpins." President Bush's 1989 crime package, if passed, would broaden the death penalty to include other drug-related murders.

Directions for conducting the debate are found in the student book. You may wish to invite your school debate coach, drama teacher, or an attorney to assist in preparing the student teams. The chart found in Lesson 9 will help students analyze the question, in conjunction with the support material found at the end of the unit.

You may wish to summarize the constitutional references for your students as follows:

The **Fifth Amendment** provides that "No person shall be held to answer for a **capital**...crime,...nor shall any person be subject for the same offence to be twice put in jeopardy of **life** or limb; nor be deprived of **life**, liberty, or property, without due process of law...."

The **Eighth Amendment** prohibits "cruel and unusual punishments."

The **Fourteenth Amendment** extends due process protections to all persons, regardless of the state in which they live.

In addition, you may wish to refer to the 1972 Supreme Court case of *Furman* v. *Georgia*, 408 U.S. 238 (see below). In this case, the justices issued nine separate opinions. In a five-to-four decision, capital punishment, as administered under state laws that gave unguided discretion to juries (at that time all state laws), was deemed unconstitutional as a violation of the Eighth Amendment.

Since 1972, many state legislatures have rewritten their death penalty laws so the language would not be interpreted to violate the Eighth Amendment. Nevertheless, many Americans still oppose these laws on moral, constitutional, and economic grounds.

Supreme Court Quotations from *Furman* v. *Georgia*

Justice William Brennan: The Cruel and Unusual Punishments Clause, like the other great clauses of the Constitution, is not susceptible of precise definition. Yet we know that the values and ideals it embodies are basic to our scheme of government....

...[W]e cannot now know exactly what the Framers thought "cruel and unusual punishments" were. Certainly they intended to ban torturous punishments, but the available evidence does not support the further conclusion that only [torture was] to be outlawed....Nor did they intend simply to forbid punishments considered "cruel and unusual" at the time....

...[T]he...Clause prohibits the infliction of uncivilized and inhuman punishments. The State, even as it punishes, must treat its members with respect for their intrinsic worth as human beings. A punishment is "cruel and unusual," therefore, if it does not comport with human dignity....

When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system....

Justice Thurgood Marshall: The question...is not whether we condone rape and murder, for surely we do not; it is whether capital punishment is "a punishment no longer consistent with our own self-respect" and, therefore, violative of the Eighth Amendment....

Perhaps the most important principle...is one [repeated] again and again in the prior opinions of the Court: i.e., the cruel and unusual language "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Thus, a penalty which was permissible at one time in our Nation's history is not necessarily permissible today....

...if [capital punishment] violates the Constitution, it does so because it is excessive or unnecessary, or because it is abhorrent to currently existing moral values....

It also is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society. It is the poor, and the members of minority groups who are least able to voice their complaints against capital punishment. Their impotence leaves them victims of a sanction which the wealthier, better-represented, just-as-guilty person can escape....

At a time in our history when the streets of our Nation's cities inspire fear and despair, rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But, the measure of a country's greatness is its ability to retain compassion in time of crisis. No nation in...recorded history...has a greater tradition of revering justice and fair treatment for all its citizens in times of turmoil, confusion, and tension than ours. This is a country which stands tallest in troubled times, a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values which lie at the roots of our democratic system.

Justice Potter Stewart: [T]wo of my Brothers have concluded that the infliction of the death penalty is constitutionally impermissible in all circumstances under the Eighth and Fourteenth Amendments. Their case is a strong one. But I find it unnecessary to reach the ultimate question they would decide....

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed....I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.

Justice Warren Burger: ....I conclude that the constitutional prohibition against "cruel and unusual punishments" cannot be construed to bar the imposition of the punishment of death....

If we were possessed of legislative power, I would either join with Mr. Justice Brennan and Mr. Justice Marshall or, at the very least, restrict the use of capital punishment to a small category of the most heinous crimes. Our constitutional inquiry, however, must be divorced from personal feelings as to the morality and efficacy of the death penalty and be confined to the meaning and applicability of the uncertain language of the Eighth Amendment....of all our fundamental guarantees, the ban on "cruel and unusual punishments" is one of the most difficult to translate into judicially manageable terms. The widely divergent views of the Amendment expressed in today's opinions reveal the haze that surrounds this constitutional command. Yet it is essential to our role as a court that we not seize upon the enigmatic character of the guarantee as an invitation to enact our personal predilections into law.

...in a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.... [P]unishments such as branding and the cutting off of ears, which were commonplace at the time of the adoption of the Constitution, passed from the penal scene without judicial intervention because they became basically offensive to the people and the legislatures responded to this sentiment....

....There are no obvious indications that capital punishment offends the conscience of society to such a degree that our traditional deference to the legislative judgment must be abandoned.

Justice Harry Blackman: Cases such as these provide for me an excruciating agony of the spirit. I yield to no one in the depth of my distaste, antipathy, and indeed, abhorrence for the death penalty, with all its aspects of physical distress and fear and of moral judgment exercised by finite minds. That distaste is buttressed by a belief that capital punishment serves no useful purpose that can be demonstrated....It is antagonistic to any sense of "reverence for life."

...[W]ere I a legislator, I would do all I could to sponsor and to vote for legislation abolishing the death penalty. And were I chief executive of a sovereign State, I would be sorely tempted to exercise executive clemency....[But] [t]he authority should not be taken over by the judiciary in the modern guise of an Eighth Amendment issue.

UNIT 4
What Is Procedural Justice?

The final unit focuses on procedural justice, which is concerned with the fairness of the **procedures** used to gather information and make decisions, **not** the fairness of the decisions themselves.

To introduce this unit, ask your class for a definition of **procedural justice**. Then write the phrases "keystone of liberty" and "the heart of the law" on the chalkboard or on poster paper. What do these phrases mean in terms of procedural justice?

Next, read the opening unit page with your class and have them discuss the question posed in the caption.

Lesson 11

What Intellectual Tools Can Help You Evaluate Issues of Procedural Justice?

Lesson Overview

In this lesson, students will be introduced to two new intellectual tools to assist them in analyzing issues of procedural justice. They will have an opportunity to use these tools to identify the information sought or decision to be made in a variety of situations. Then they will evaluate whether or not the procedure used to gather information or make a decision was fair.

Lesson Objectives

At the conclusion of the lesson, students should be able to

1. identify issues of procedural justice
2. describe a situation which raises issues of procedural justice
3. identify information sought or the decision to be made in particular situations
4. evaluate procedures used to gather information or to make a decision
5. take eight special considerations into account when evaluating issues of procedural justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Identifying issues of procedural justice

To introduce the lesson, ask each student to take a few moments to read the four examples found on pages 110 and 111 of the student text, which raise issues of procedural justice.

Afterward, lead a class discussion of the incidents, using the "What do you think?" questions as a guide. In answering question #2, caution students to "change the names to protect the innocent."

B. Reading and Discussion: Learning to apply two new intellectual tools

Have students work with a study partner to read about and apply the two intellectual tools introduced in the next section of the lesson. You may wish to write *"Identify the information sought or decision to be made"* and *"Evaluate the procedure"* on the chalkboard or poster paper for easy reference.

Have the student partners apply the first intellectual tool—identifying the information being sought or decision to be made—to the two captions on page 112.

C. Reading and Discussion: Taking eight considerations into account when evaluating procedures used to gather information and/or make a decision

Read and discuss the eight considerations found in the student book. Then have students work individually or in small groups to match the considerations with the situations described in the "What do you think?" section of the lesson. (There may be more than one answer for each situation.) Reasonable matches are as follows:

1. a,c,f
2. all
3. a,c,f,g
4. b,f
5. a,c,f
6. a,b,c,d,f

D. Concluding Activity

Conclude the lesson by regrouping the class and discussing the fairness of each procedure described in the problem and your class's recommendations, if any, for improving the procedures.

Afterward, you may wish to assign one of the reinforcement activities found in "Using the Lesson." The first is a notebook or journal activity for individuals to complete that concerns vigilantism and the goals of procedural justice. The second is a clipping project for a small group of students to complete and present to the class at the conclusion of the unit.

E. Planning Ahead

In the next three lessons, students will complete study charts to help them analyze issues of procedural justice. You may wish to duplicate copies of the chart for study partners or for each small group at this time. Additional copies may be kept on hand for those students who dissent from the majority group opinion.

Lesson 12

What Other Values and Interests Should Be Considered in Determining Whether Procedures Are Fair?

Lesson Overview

In this lesson, students learn a third and final tool to help them analyze issues of procedural justice. They will discuss what additional interests and values should be taken into account when determining whether procedures are fair, and apply such considerations to the story of Edmond Dantes, told in *The Count of Monte Cristo.*

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. consider other values and interests in cases of procedural justice
2. formulate and defend positions on issues of procedural justice using the intellectual tools presented in this unit
3. complete a procedural justice study chart

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Learning to identify key interests and values to be considered in cases of procedural justice

To introduce the lesson, write down the three goals of procedural justice delineated in the opening section of this unit:

- to increase the chances that all information necessary for making wise and just decisions is gathered
- to ensure the wise and just use of the information in making decisions
- to protect the right to privacy, human dignity, freedom, and other important values and interests

Explain that in this lesson students will have a chance to evaluate whether the procedures followed in *The Count of Monte Cristo* were likely to result in meeting these goals.

Next, ask your students to read about the third intellectual tool helpful in analyzing issues of procedural justice. You may wish to write *"Other interests and values"* on the chalkboard or on poster paper for easy reference.

Give students a few minutes to complete the "What do you think?" activity. Afterward, discuss your students' answers to this exercise.

B. Problem Solving: Analyzing issues of procedural justice found in a literary selection

Many interesting issues of procedural justice are raised in *The Count of Monte Cristo*, by the famous novelist and less famous attorney, Alexandre Dumas. Have students work in partnership or in small groups to read the adaptation and complete the study chart. Questions are provided in the activity directions to guide a class discussion afterwards. A sample of a completed chart appears on pages 74 and 75.

Note that the purpose of this exercise is to provide your students with practice in using the intellectual tools introduced in this unit. It is understood that their analysis will be based on the brief adaptation of the novel and on fundamental American notions of justice, not upon a thorough knowledge of Dumas' work, nor of the judicial and political system of post-Napoleonic France.

As part of your discussion you may wish to share that *The Count of Monte Cristo* is based on a true story that Dumas gleaned from police files in Paris. Like the hero in the novel, Francois Picaud had been unjustly accused of a political crime by his personal enemies. During his subsequent years in prison, he learned of a hidden treasure, which he seized after making his escape, just as the protagonist does in the novel. Picaud, like Dantes, used the treasure to finance his revenge on the men responsible for his false imprisonment and to help those who had befriended his family.

Your students may be interested to know that Mercedes, having despaired of ever seeing Dantes again, eventually married one of his enemies. Later, Dantes spares her son's life "for old time's sake." Dantes, himself, eventually sails into the sunset (literally) with an exotic Pasha's daughter, who assisted him in his vendetta.

The Count of Monte Cristo, like other works by Dumas and many of Dickens' novels, was serialized in newspapers. These serializations were the 19th century equivalent of today's soap operas.

The *Count of Monte Cristo* was one of the prolific author's favorite works (he wrote nearly 300!), as he himself felt unjustly persecuted, harassed, and slandered. As a member of a racial minority in France, Dumas held a number of grievances against his society. Through his art, he was able to release some of his anger and expose the corruption and injustices he abhorred.

INTELLECTUAL TOOLS TO USE IN EVALUATING WHETHER PROCEDURES ARE FAIR

1. **Information sought or decision to be made**

   a. **Evidence that Dantes had committed treason**

   b. **Decision as to whether or not Dantes was guilty of committing treason**

2. **Discovery and use of information**

   a. **Comprehensiveness:** The police arrested Dantes and seized the captain's letter as evidence that he was involved in a plot against the government. However, the evidence was destroyed and no effort was made to objectively investigate Dantes' claim that he did not know what was in the letter or any of the people accused of plotting against the government.

   b. **Public Observation:** The procedures were deliberately kept secret to cover up Villefort's personal connection to the conspirators.

   c. **Effective Presentation:** Neither Dantes nor his family were allowed to present any refutation of the evidence to a neutral party.

   d. **Impartiality:** Villefort destroyed evidence, limited the investigation, denied Dantes counsel, and imprisoned him without trial in order to hide his filial relationship with one of the conspirators.

e. **Reliability:** The original investigation did reliably reveal that there was a letter to be delivered, who was to deliver it, where and to whom, and the names of others involved in the conspiracy. Because a full, open, and just investigation was then squelched, the ultimate result (Dantes' imprisonment) was not based on reliable procedures.

f. **Notice:** No time to prepare for a hearing was ever given to Dantes and no hearing was ever held.

g. **Predictability and Flexibility:** Villefort deliberately ignored established procedures to protect himself.

h. **Detection and Correction of Errors:** The entire procedure was conducted secretly. No one was permitted to detect or correct errors.

3. **Protection of Other Values and Interests**

a. **Privacy and Freedom:** Dantes was incarcerated unjustly.

b. **Human Dignity:** Dantes was treated without dignity both prior to his imprisonment and during his imprisonment.

c. **Distributive Justice:** Dantes was denied the normal procedures used in other cases in Villefort's effort to protect himself. Therefore, Dantes was not treated the same as other persons accused of crimes.

d. **Other Considerations:** Other values might be political freedom, freedom of association and assembly, and the right to counsel and appeal, all of which Dantes was denied. [Note however that not all of these principles applied under the laws of 19th century France.]

C. Concluding Activity

Reconvene the class for a group discussion of "The Imprisonment of Edmond Dantes." Ask students to note particular values and interests they believe are important in making a fair evaluation of the procedures followed in the Dantes case. Jot their suggestions on the chalkboard or on poster paper to facilitate discussion.

Afterward,you may wish to assign reinforcement activities from "Using the Lesson." The first two are creative writing activities based on *The Count of Monte Cristo,* one to be completed by study partners and the second by individual students. Once again, you may wish to "publish" their efforts for other students to read, either in a looseleaf binder or on a bulletin board or learning center display.

In addition, you may wish to have students read the original unabridged novel and write a book report which highlights issues of justice raised in all three categories—distributive, corrective, and procedural. Other students might do the same with Victor Hugo's *Les Miserables*.

Subsequently, students could discuss and compare the two novels in a "Meet the Authors" television or radio broadcast, where students play the roles of literary critics and legal experts who interview two students portraying Dumas and Hugo.

In the third activity, students perform improvisations which dramatize issues of procedural justice, as suggested in the student book.

D. Planning Ahead

In the next lesson, students will study the Sacco and Vanzetti case. To facilitate their analysis, you may wish to duplicate copies of the chart found in Lesson 12 of the student book, if you have not previously done so.

You also may wish to review Lessons 26 and 27 in the Center for Civic Education's *We the People...* program (Level III), concerning procedural due process, as they will be applicable in the next lesson.

Lesson 13

Is Procedural Justice Always Important?

Lesson Overview

In this lesson, students examine issues of procedural justice from the viewpoint of the Founders' emphasis on the right to due process, especially in cases involving political dissidents. Students will analyze the case of Sacco and Vanzetti in terms of the three goals of procedural justice, using the intellectual tools introduced in this unit.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the Founders' views concerning due process
2. analyze a legal case by applying intellectual tools helpful in considering issues of procedural justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reviewing the views of the Founders

To underscore the importance of procedural justice in any society, but specifically one in whose founding document the goal to "establish justice" is clearly delineated, review the views of the Founders concerning due process. Be sure to note that the Founders themselves had suffered from a system in which commonly held beliefs and legal protections concerning procedural justice were not always put into practice.

B. Reading and Discussion:
Taking a historical look at issues of due process

After reading the introductory student text, use the "What do you think?" questions on pages 135 and 136 to guide a general discussion about due process and help you assess your students' attitudes about this important constitutional protection. Many students are so concerned with outcomes that they fail to realize the importance of procedure. This is especially true when incidents involving criminal justice arise.

They are not alone. Student attitudes reflect those of society at large. In a desire to "do something" about the problems that face our society, politicians and community leaders often make short shrift of the rights of all people—even those accused of heinous crimes—to procedural due process, i.e., to be considered innocent until proven guilty in accordance with certain established, predictable, and fair procedures.

Time and again, questions about such issues have been raised in our nation's history. By helping students learn to analyze objectively such historical incidents, you will help prepare them to evaluate similar situations when they arise in their own lives and times.

Throughout your discussion, however, it is important to emphasize that not all questions concerning procedural justice involve criminal law. Examples throughout this unit highlight the importance of procedural justice in various areas of civil law; in the private sector; in situations involving the executive and legislative branches of the national, state, and local governments; and in their own daily lives.

C. Problem Solving:
Analyzing a case of procedural justice from U.S. history

Have students work in pairs to read and analyze the Sacco and Vanzetti case, using the study chart found in the previous lesson as a guide. Afterward, have students make a list of the points they would make if they were arguing for or against a stay of execution by the governor. Reconvene the class for a group discussion.

A sample of a completed chart appears below.

PROCEDURAL JUSTICE CHART

1. **Information sought or decision to be made**

   a. The information sought concerned the murders of the bank security guard and paymaster.

   b. The decision to be made was whether Sacco and Vanzetti were guilty of the murders.

2. **Discovery and Use of Information**

   a. **Comprehensiveness:** The line-up procedure usually followed was changed; therefore, positive identification of the defendants was questionable. New evidence obtained after the trial was not allowed to be considered.

   b. **Public Observation:** The defendants did not have immediate legal counsel during initial questioning at the police station; the trial itself was public.

   c. **Effective Presentation:** The defendants were unable to use key witnesses. Their lawyer may have been inadequate.

   d. **Impartiality:** The judge's impartiality was questionable, as evidenced by his remarks to the jury.

   e. **Reliability:** The reliability of key prosecution witnesses was doubtful. The ballistics evidence was poorly labelled and uncertain.

   f. **Notice:** The degree of notice is uncertain from the information provided.

   g. **Predictability and Flexibility:** State laws at the time made it difficult to present new evidence to show defendants' innocence.

   h. **Detection and Correction of Errors:** See above.

3. **Protection of Other Values and Interests**

   a. **Privacy and Freedom:** A number of the defendants' constitutional rights were assailed, including the right to counsel from the time of arrest and the freedom to assemble without being tainted by guilt by association.

b. **Human Dignity:** By violating fundamental rights of due process and freedom of association, the procedure violated defendants' right to be treated as human beings with dignity.

c. **Distributive Justice:** Because of their political beliefs, the defendants did not receive the rights to due process others accused of murder would have been afforded.

d. **Other Considerations:** A number of other basic American values and principles were undermined in this case, including the right of assembly and association, conscience, and freedom of expression. The ultimate sentence of death also raises the consideration of the value of human life.

Should you be interested in providing additional reading about the Sacco and Vanzetti case in your learning center, the following books are suggested:

The Case That Will Not Die
Herbert B. Ehrmann, 1969

The Case of Sacco and Vanzetti: A Critical Analysis for Lawyers and Laymen
Justice Felix Frankfurter, 1927

Sacco-Vanzetti: The Murder and the Myth
Robert Humphrey Montgomery, 1965

Postmortem: New Evidence in the Case of Sacco and Vanzetti
William Young and David Kaiser, 1985

D. Concluding Activity

Engage the class in a discussion of the "What do you think?" questions on page 148. In doing so, refer back to the initial class discussion concerning the goals stated in our Constitution and founding documents, the three goals of procedural justice, and the sometimes competing concerns of individual rights and the public good or common welfare.

To reinforce the lesson, assign one of the activities suggested in "Using the Lesson." In the first activity, students analyze Daniel Webster's definition of due process, showing how his idea of due process promotes procedural justice. In the second, students write an editorial on due process

in their program notebooks, which can then be "published" to share with the rest of the class. In the third activity, students design a due process cartoon.

As a variation, you may wish to work with your librarian to identify literary accounts of cases which raise issues of procedural justice, such as Shakespeare's *Merchant of Venice*, *The Crucible* by Arthur Miller, and *Gideon's Trumpet* by Anthony Lewis, and have students write book reports.

E. Planning Ahead

In the next lesson, students will be debating a proposed congressional bill. You may wish to invite a judge, attorney, law enforcement officer, or someone from your congressional representative's office to discuss the problem with your class.

Lesson 14

How Do You Balance the Goals of Procedural Justice With Other Interests of Our Society?

Lesson Overview

In this lesson, students will consider issues of procedural justice in terms of constitutional protections. Students will discuss a bill proposed in Congress which would limit the protections of the Fourth Amendment and thus significantly affect judicial procedure as we know it today. In doing so, students will face the problem of competing concerns—protection of individual rights versus establishing a safe, secure society.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. analyze a proposed law using intellectual tools helpful in studying issues of procedural justice
2. describe the protections of the Fourth Amendment
3. list the costs and benefits of modifying the exclusionary rule
4. express and justify their views concerning the exclusionary rule and the "good faith exception"
5. compare the goals of corrective and procedural justice in terms of the Fourth Amendment and the proposed legislation to limit its protections

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reviewing the goals of procedural and corrective justice

Begin the lesson by reviewing the goals of procedural justice and corrective justice, and some of the special values and interests which should be taken into consideration when making decisions about each.

For example, in the area of corrective justice, society has an interest in deterring future wrongs. Ask your students how society should fulfill the need to deter crime while at the same time promoting fairness, human dignity, individual freedom, and the other goals of procedural justice.

Explain that these are not abstract considerations, but ones that lawmakers, law enforcement officers, and judges, among others, face every day. Tell your class that in this lesson, they will have the chance to "step into the shoes" of congressional representatives and discuss and debate these issues.

B. Problem Solving: Evaluating a law designed to better promote justice in our society

Part 1

To begin, review the directions for the activity with your class. Have students work in small groups to read and analyze this problem. A group secretary should be chosen to record arguments for or against the bill.

Part 2

After small groups have met to analyze the proposed bill, reconvene the class. Explain that they will now be considered members of the United States House of Representatives. Have them choose a Speaker of the House and a recording secretary.

The Speaker should moderate discussion of the proposed legislation, calling upon specific representatives to speak for or against the bill. Afterward, have a roll call vote. Does the bill pass?

Note: For your information, the statement by former Chief Justice Burger on page 155 of the student book is from his dissenting opinion in *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 389 (1971).

C. Concluding Activity: Debriefing the activity

To debrief the activity, hold a class discussion using the "What do you think?" questions as a guide. During your discussion, you may wish to share the following excerpts from the congressional record of September 8, 1988, at which time one of many debates on the good faith exception was held.

> **Mr. RANGEL [New York, Chairman of the Select Committee on Narcotics Abuse and Control]:** Mr. Chairman, this war against drugs seems like it is becoming a war against the Constitution. We are not talking about drug traffickers that are being protected under existing law. What we are talking about is rulings that have been made that government must also obey the law.
>
> These laws, no matter what we do, are interpreted by the U.S. Supreme Court. Each time we talk about what we are doing to the criminal, we have to understand that we are talking about a cloak of innocence, that a person is innocent until proven guilty, and we are trying to make sure that the innocent continue to have protection against intrusion into their privacy....
>
> **Mr. McCOLLUM [Florida]:** Mr. Chairman, the exclusionary rule is not a constitutional provision. The exclusionary rule is a court-made interpretation in order to enforce some constitutional rights. It has been getting in the way, the way it has been interpreted, of law and order, and very simply put, the balanced interests of the American public versus the balanced interests of the accused in the sense that the enforcement process has been swinging too heavily in favor of the accused.
>
> This amendment, this good faith exception...is nothing more and nothing less than an effort to put that pendulum back in the right direction in favor of the American public interest. We need to be able to arrest and convict drug traffickers, drug dealers, bad apples, and put them in jail. We need at the same time to protect the constitutional rights of American citizens....
>
> **Mr. EDWARDS [California]:** ...Mr. Chairman, ...it really is rather a shocking thing that at this time in our history we are even considering allowing illegal evidence to be used against Americans. I certainly hope there is a huge vote against this amendment.

> The only contribution I can make is that...for the last 15 years or so, all of the directors [of the FBI] have been asked the question,"Do you approve of the exclusionary rule, and do FBI agents comply with it?"
>
> Every director, Hoover, Kelly, Webster, and now Judge Sessions, says, "Of course we do. We have no problems in complying with the exclusionary rule."
>
> The fact is that they like to have the exclusionary rule because that means that FBI agents are going to behave themselves. They know that if they violate the exclusionary rule, they are going to look like fools before the country....

After sharing the remarks from the congressional record, ask your students if they think such a bill would further the goals of procedural justice. Would it strike an appropriate balance between the sometime competing interests of public welfare and the rights of individuals accused of committing a crime?

You then may wish to update your students on this continuing debate. The exclusionary-rule language was "bumped" out of the drug bill package in committee in the 1988 congressional session. President Bush put it back in his crime package in 1989. At the time of this writing, HB 1239 is still in conference, as is the president's crime package. You may wish to call your local bar association, the ACLU, or congressional representative to discover the outcome of this proposed legislation.

Finally share this quotation of Justice Louis Brandeis with your class:

> *"Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example....If the government becomes a lawbreaker, it breeds contempt for law;...."*
>
> *Olmstead* v. *United States*, 277 U.S. 438, (1928), dissenting opinion

Ask students to paraphrase the quotation and discuss it in terms of the issues raised in this lesson.

To reinforce the lesson, assign one of the "Using the Lesson" activities. In the first activity, students express their views on procedural justice through art. In the second, students write an editorial.

D. Planning Ahead

In the concluding activity for this unit, students will analyze a civil case that involves issues of procedural justice. You may wish to have copies of the chart found in Lesson 12 available to assist them in this exercise.

You also may wish to invite a judge, attorney, member of an environmental group, or a staff member from your congressional office to participate.

Unit 4
Concluding Activity

To complete this final unit activity, have students analyze the case presented, using the intellectual tools introduced in this unit. Study partners or small groups should work together to complete the chart prior to enacting the appeal hearing.

To simplify classroom management, you may wish to construct groups based on the roles students will play during the mock hearing. For example, students playing Mr. Lurkis, other citizens who oppose the plant, and their attorneys would be in one group; members of the press in another; those in favor of the plant and their attorneys in a third group, etc. (Suggestions for roles to play appear in the student text.)

After small groups have analyzed the case and discussed their positions, convene the hearing. Have the judges sit facing the class. Have attorneys present arguments for their sides and call upon witnesses to testify. Judges may interrupt at any time with questions.

Afterward, the justices should deliberate and issue a decision. The press can then interview the key players and write news releases and copy for an evening TV news broadcast.

To debrief the activity, engage in a final class discussion. If students were expressing their own personal views, would their views differ from those of the characters whom they portrayed? Would your students vote for or against allowing the building of the plant?

After tallying the vote, you may wish to compare the views of your class with the actual appellate court decision, once again emphasizing that it is perfectly legitimate to disagree with the court decision.

Summary of decision in *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F.2d 608 (1965)

The Court of Appeals set aside the Federal Power Commission's licensing order and later related orders because of the failure of the commission to compile a record sufficient to support its decision, because it ignored certain relevant factors, and because it failed to make a thorough study of possible alternatives. The court remanded the matter for new proceedings which would include the study of ways to preserve the natural beauty of the site and resolve the historic shrines and fisheries questions.

The court said that the commission's role, as representative of the public interest, "does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the commission."

The commission's refusal to receive the Lurkis testimony and proffered information on fish protection devices and underground transmission facilities exhibited disregard of its mandate to probe all feasible alternatives. The commission has an affirmative duty to inquire into and consider all relevant facts.

Planning Ahead

A final lesson is included to review the key concepts and intellectual tools presented in the program. Please duplicate the blank charts from each unit and have them on hand to assist students in analyzing the final activity.

Program Review

Lesson 15

Are There Situations Which Raise Issues in All Three Categories of Justice?

Lesson Overview

In this final lesson, students have the opportunity to evaluate a case which raises issues in all three categories of justice, using the intellectual tools they have learned throughout the program.

Following the "Teaching Procedures," you will find an award certificate to sign and present to all students in recognition of a job well done.

You also may wish to invite your school principal, a local government official, or celebrity to sign and present the certificates in the classroom or at a school assembly or open house.

Lesson Objectives

At the conclusion of the lesson, students should be able to

1. analyze a problem which raises issues of distributive, corrective, and procedural justice
2. take positions in a simulated public forum which raises issues of distributive, corrective, and procedural justice

Materials Needed

Student text

Teaching Procedures

A. Introductory Activity: Reading and planning the activity

Have students read the lesson introduction and then make plans for completing the activity. Students will participate in a simulated public forum, playing the roles of various public officials and citizens.

B. Problem Solving: Working in groups to analyze the case

Divide the class into small groups. You may wish to assign groups based upon the parts students will play during the simulation, i.e., those in favor of or opposed to the property tax, those conducting the forum, the press, etc.

Have students use the charts from each unit to analyze the case. You may wish to write the three overall questions to be decided on the chalkboard or on poster paper for easy reference.

Afterward, enact the hearing, assisting students in devising the questions they will be asking or the testimony they will be giving. You may or may not wish to follow basic rules of parliamentary procedure.

C. Concluding Activity

Debrief the activity by holding a class discussion based on the three overall questions raised in the student text. Then call for a class vote on the issue. You may wish to compare your class's views with the opinion in the case of *San Antonio Independent School District* v. *Rodriquez*, 93 S. Ct.1278 (1973), summarized below:

A federal district court, finding that education is a "fundamental" right, had concluded that the state system's reliance in large part on local property taxes to fund education favors the more affluent districts and could only be upheld if it could be shown there was a compelling state interest for that system, and that this had not been shown. The district court also found that the state had failed even to demonstrate a reasonable basis for a system that results in different levels of per-pupil expenditure.

The Supreme Court, in a 5-4 decision, reversed the lower court's holding. The majority opinion, written by Justice Lewis Powell, said that education was not a fundamental interest, at least not when some minimum level of education was provided. The majority said that the courts lacked the power to create new substantive rights by defining interests as "fundamental," unless those interests were already guaranteed elsewhere in the Constitution.

The majority further held that, contrary to the district court's conclusion, the Texas financing system was rationally designed to maintain local control over school spending and educational policy. The opinion stated, "While assuring a basic education for every child in the state, [the Texas system] permits and encourages a large measure of participation in and control of each district's schools at the local level."

Justice Byron White, in his dissent, disagreed. "I cannot disagree with the proposition that local control and local decision-making play an important part in our democratic system of government....Much may be left to local option, and this case would be quite different if it were true that the Texas system, while insuring minimum educational expenditures in every district through state funding, extends a meaningful option to all local districts to increase their per-pupil expenditures and so to improve their children's education to the extent that increased funding will achieve that goal....

The difficulty with the Texas system, however, is that it provides a meaningful option to [wealthy districts] but almost none to [poor districts] with a low per-pupil real estate tax base. In these latter districts, no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the real estate property tax. In these districts the Texas system utterly fails to extend a realistic choice to parents, because the property tax, which is the only revenue-raising mechanism extended to school districts, is practically and legally unavailable....In my view, the parents and children in [poor districts] suffer from an invidious discrimination violative of the Equal Protection Clause."

Kenneth L. Karst, in a commentary on this case in the *Encyclopedia of the American Constitution*, 1986, concluded with the following question:

"The question was, and remains, what kinds of economic inequality, **imposed by the state itself**, can be tolerated in the face of a constitutional guarantee of the equal protection of the laws."

Since the ruling in this case, at least ten states have seen their school-financing systems overhauled under the protections of their state constitutions, because the Supreme Court has interpreted the federal Constitution as not guaranteeing equal access to education as a fundamental right.

In 1989, the Texas Supreme Court declared the state's method of school financing unconstitutional in a 9-0 decision. The opinion stated that the wide gaps between the richest and poorest school districts violate a provision of the Texas state constitution, which requires an "efficient" education. Justice Mauzy said, "A band-aid will not suffice. The system itself must be changed."

The recent Texas decision has resurrected the demand for a more uniform approach to school financing across the country. At President Bush's 1989 "education summit," the idea of restructuring schools and setting national performance goals was endorsed.

Some argue that these recent events will go a long way in eroding the concept of local control of schools. Others say that if funds were more evenly distributed throughout school districts, the idea of parental choice in schooling their children would gain greater acceptance. Until now, one of the major criticisms of "choice" has been that it would leave poorer schools even poorer.

After completing your discussion, conclude by reading the "Wrap Up" segment on the final page of the student book, congratulating your students and presenting them with their award certificates.

Certificate of Achievement

presented to

_____

for completing a course of study on

Justice

a project of

Law in a Free Society

A Series in Civic Education

Executive Director
Center for Civic Education

_____ Principal

_____ Teacher

_____ Class

_____ Date

95

Curricular Materials

The Center publishes curricular materials for classroom use in grades K-12, and other materials related to civic education. The following are the principal titles available:

Law in a Free Society Series

Multi-media instructional units for grades K-12
Student texts, teacher's guides, filmstrips

- *Authority*
- *Responsibility*
- *Justice*
- *Privacy*

Multi-media instructional units in Spanish for grades K-3
Student texts, teacher's guides, filmstrips

- *Autoridad*
- *Responsibilidad*
- *Justicia*
- *Intimidad (Privacidad Personal)*

Instructional units for grades 7-12
Newly-revised student texts and teacher's guides

- *Authority*
- *Responsibility*
- *Justice*

Exercises in Participation Series
Student texts and teacher's guides for middle school

- *Drugs in the Schools*
- *Diversity* - available soon

We the People...
Student texts and teacher's guides on the Constitution and Bill of Rights for upper elementary, middle, and high school

Forthcoming Titles

With Liberty and Justice for All
High school student text and teacher's guide on the Bill of Rights for the *We the People...* Programs

Property **- Law in a Free Society Series**

Other Publications

The Morality of Democratic Citizenship: Goals for Civic Education in the Republic's Third Century by R. Freeman Butts, 1988

Center Programs

The Center offers a wide range of innovative programs in civic education. These programs include curricular materials, in-service training, recognition of student and teacher achievement, and professional development opportunities. The instructional programs are conceptually based and feature critical thinking, problem solving, and cooperative learning. The following are the principal programs offered:

We the People... Bicentennial Programs on the Constitution and Bill of Rights: designed to promote the study of the values and principles of our constitutional democracy by providing curricular materials, teacher training, and culminating activities at the upper elementary, middle, and high school levels

Discover Early America. National/Historical Pictorial Map Contest: a geography contest in which students at all levels illustrate maps of historical events in early America

National Training and Dissemination Project: a nationwide program in law-related education providing curricular materials and teacher training designed to promote civic competence and responsibility in students at all grade levels

Summer institutes on the Constitution and American political theory for teachers K-12: offered by the Center at the University of California, Los Angeles, and other locations

National and international conferences on civic education: offering educators advanced training and a means of exchanging ideas and experiences in the field

CIVITAS: A Model Framework for Civic Education: designed to (1) develop an exemplary civic education curriculum framework that can be used as a resource by educators responsible for developing civic education curriculums and (2) promote its use in the nation's schools

The Disney Channel Salutes the American Teacher: a national program designed to honor the contributions of the teaching profession by recognizing thirty exemplary teachers each year

For further information, please contact

Center for Civic Education
Dissemination Division
5146 Douglas Fir Road
Calabasas, CA 91302